quire an underlying security see Rule 13d-3(d)(1).

Item 5. Ownership of 5 Percent or Less of a Class. If this statement is being filed to report the fact that as of the date hereof the reporting person has ceased to be the beneficial owner of more than 5 percent of the class of securities, check the following [ ].

INSTRUCTION.—Dissolution of a group requires a response to this item.

Item 6. Ownership of More than 5 Percent on Behalf of Another Person. If any other person is known to have the right to receive or the power to direct the receipt of dividends from, or the proceeds from the sale of, such securities, a statement to that effect should be included in response to this item and, if such interest relates to more than 5 percent of the class, such person should be identified. A listing of the shareholders of an investment company registered under the Investment Company Act of 1940 or the beneficiaries of employee benefit plan, pension fund or endowment fund is not required.

Item 7. Identification and Classification of the Subsidiary Which Acquired the Security Being Reported on By the Parent Holding Company. If a parent holding company has filed this form, so indicate under Item 3(g) and attach an exhibit stating the identity and the Item 3 classification of the relevant subsidiary, and, if applicable, a separate exhibit furnishing the information called for by Rule 13d-1(b)(1)(ii)(G) with respect to nonqualified subsidiaries.

Item 8. Identification and Classification of Members of the Group. If a group has filed this schedule, so indicate under Item 3(h) and attach an exhibit stating the identity and Item 3 classification of each member of the group.

Item 9. Notice of Dissolution of Group. Notice of dissolution of a group may be furnished as an exhibit stating the date of the dissolution and that all further filings with respect to transactions in the security reported on will be filed, if required, by members of the group, in their individual capacity. See Item 5.

Item 10. Certification. By signing below I certify that, to the best of my knowledge and belief, the securities referred to above were acquired in the ordinary course of business and were not acquired for the purpose of and do not have the effect of changing or influencing the control of the issuer of such securities and were not acquired in connection with or as a participant in any transaction having such purpose or effect.

Signature. After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Dated: ————.

————.
Signature.

————.
Name/Title.

The original statement shall be signed by each person on whose behalf the statement is filed or his authorized representative. If the statement is signed on behalf of a person by his authorized representative other than an executive officer or general partner of the filing person, evidence of the representative's authority to sign on behalf of such person shall be filed with the statement, *Provided, however,* That a power of attorney for this purpose which is already on file with the Commission may be incorporated by reference. The name and any title of each person who signs the statement shall be typed or printed beneath his signature.

NOTE.—Six copies of this statement, including all exhibits, should be filed with the Commission.

ATTENTION.—Intentional misstatements or omissions of fact constitute Federal criminal violations (see 18 U.S.C. 1001).

(Secs. 3(b), 13(d)(1), 13(d)(2), 13(d)(5), 13(d)(6), 14(d)(1), 23; 48 Stat. 882, 894, 895, 901; sec. 203(a), 49 Stat. 704, sec. 8, 49 Stat. 1379; sec. 10, 78 Stat. 88a; secs. 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3-5, 84 Stat. 1497; secs. 3, 18, 89 Stat. 97, 155 (15 U.S.C. 78c(b), 78m(d)(1), 89m(d)(2), 78m(d)(5), 78m(d)(6), 78n(d)(1), 78w).)

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

III. Item 19 of Form S-1, Item 18 of Form S-11, Item 5 of Form 10, Item 14 of Form 10-K, and Item 5(g) of Schedule 14A are amended to read as follows:

§ 239.11 Form S-1, registration statement under the Securities Act of 1933.

§ 239.18 Form S-11, for registration under the Securities Act of 1933 of securities of certain real estate companies.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

§ 249.210 Form 10, general form for registration of securities pursuant to section 12 (b) or (g) of the Securities Exchange Act of 1934.

§ 249.310 Form 10-K, annual report pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934.

§ 249.14a-101 Schedule 14A. Information required in proxy statement.

INSTRUCTIONS.—1. The percentages are to be calculated on the basis of the amount of outstanding securities, excluding securities held by or for the account of the registrant or its subsidiaries, plus securities deemed outstanding pursuant to Rule 13d-3(d)(1) under the Exchange Act.

(Secs. 7, 10, 19(a), 48 Stat. 78, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 8, 68 Stat. 685; 15 U.S.C. 77g, 77j, 77s(a); secs. 12, 13, 14, 15(d), 23, 48 Stat. 892, 894, 895, 901; sec. 203(a), 49 Stat. 704; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec. 202, 68 Stat. 686; secs. 3, 4, 5, 6, 10, 78 Stat. 565-568, 569, 570-574, 88a; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3-5, 28(c), 84 Stat. 1435, 1479; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 18, 89 Stat. 117, 118, 119, 155 (15 U.S.C. 78*l*, 78m, 78n, 78o(d), 78w).)

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

APRIL 21, 1978.

[FR Doc. 78-11534 Filed 4-27-78; 8:45 am]

[8010-01]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Part 240]

[Release Nos. 33-5926; 34-14693; File No. S7-739]

FILING AND DISCLOSURE REQUIREMENTS RELATING TO BENEFICIAL OWNERSHIP

Proposed Amendments to Rule and Schedule

AGENCY: Securities and Exchange Commission.

ACTION: Proposed amendments to rule and schedule.

SUMMARY: The Commission is proposing for comment the amendment of a rule which would expand the classes of persons required to disclose beneficial ownership and related information of certain equity securities. The persons to be added under the proposed amendment are those who own more than five percent of a class of certain equity securities and who: (a) Acquired such ownership prior to December 22, 1970; (b) acquired not more than 2 percent of the class within a 12-month period; or (c) acquired such ownership in certain stock-for-stock exchanges. These actions would implement the statutory authorization recently granted to the Commission to close the gaps which exist in the present scheme for requiring disclosure of persons whose beneficial ownership exceeds 5 percent of a class of certain equity securities.

DATE: Comments must be received on or before June 30, 1978.

ADDRESS: Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Comment letters should refer to File No. S7-739. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT:

John Granda, Office of Disclosure Policy and Proceedings, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, 202-755-1750.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced proposed amendments to new rule 13d-1 and new schedule 13G relating to disclosure by certain persons whose beneficial ownership of equity securities described in section 13(d)(1) of the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78a et seq., as amended by Pub. L. 94-29 (June 4, 1975) and Pub. L. No. 95-213 (December 19, 1977)) exceeds 5 percent. These announcements were made at the same time that the Commission announced amendments to regulation 13D. Regulation 13D had been scheduled to take effect on April 30, 1978. As amended, that schedule will take effect 30 days after the publication in the FEDERAL REGISTER of a related release published today. See Exchange Act Release No. 34-14692 (43 FR). The amendments are being proposed for comment to assist in the development of a comprehensive system for disclosure of the beneficial ownership of certain public companies.

I. BACKGROUND

Section 13(d) of the Exchange Act requires any person who acquires beneficial ownership of more than 5 percent of a class of certain equity securities to file a statement with the Commission reporting that acquisition and certain other information related to such person's ownership of those securities. Section 13(d) is not, however, an ownership reporting provision of general application. Its legislative history reveals that it was intended to provide information to the public and the affected issuer about rapid accumulations of its equity securities in the hands of persons who would then have the potential to change or influence control of the issuer.[1]

Because section 13(d) attempts to deal with the more limited concern of rapid shifts in control, acquisitions unrelated to that purpose were exempted therefrom. Thus, persons who acquire not more than 2 percent of a class of securties within a 12-month period are exempted by section 13(d)(6)(B) from disclosing their ownership. Also section 13(d) is keyed to making an "acquisition" of the requisite amount of securities. Thus persons who acquired their ownership prior to the enactment of the 5-percent threshold on December 22, 1970 (Pub. L. 91-567) also are not subject to section 13(d). There also is an exemption from reporting acquisitions of securities acquired in a stock-for-stock exchange which is registered under the Securities Act of 1933 ("Securities Act") (15 U.S.C. 77a et seq.) because Congress apparently believed, at that time, that shareholders of the subject issuer would, through the receipt of the required prospectus, receive all the material facts necessary to make an informed decision whether to hold their stock or exchange it for the stock of the company making the exchange offer.[2]

In June 1975 Congress enacted section 12(m) of the Exchange Act which directed the Commission to conduct a study and investigation of the practice of recording the ownership of securities in other than the name of the beneficial owner—"Street"[3] and "nominee"[4] names—to determine whether the practice is consistent with, inter alia, the purpose of section 13(d). In its final report to Congress on December 3, 1976 ("Street Name Study"), the Commission concluded that the practice limits the amount of information readily available to the public regarding beneficial owners of substantial amounts of an issuer's securities and therefore may not provide the disclosure contemplated by Congress. In particular, the Commission noted the gaps in section 13(d), discussed above, which permit persons whose ownership exceeds 5 percent to avoid reporting such ownership. The Commission recommended that a comprehensive system for disclosure of ownership interests be established and requested legislation to require ownership reports from those persons owning more than 5 percent of an issuer's securities who were not then required to report under the Exchange Act.

The Commission's recommendation was implemented with the enactment of section 13(g) of the Exchange Act on December 19, 1977.[5] Section 13(g)(1) requires any person who is directly or indirectly the beneficial owner of more than 5 percent of a class of equity securities specified in Section 13(d)(1) of the Exchange Act to send to the issuer and file with the Commission a statement setting forth, in such form and at such time as the Commission may, by rule, prescribe: Such person's identity, residence, citizenship, the number and description of the shares in which such person has

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[1] S. Rep. No. 550, 90th Congress, 1st session 7 (1967); H.R. Rep. No. 1711, 90th Congress, 2nd session 8 (1968) and hearings on S. 510 before the Subcommittee on Securities of the Senate Committee on Banking and Currency, 90th Congress, 1st session (1967).

[2] Section 13(d)(6)(A). See S. Rep. No. 550, 90th Congress, 1st session 3 (1967); H.R. Rep. No. 1711, 90th Congress, 2nd session 3 (1968).

[3] Nominee name registration refers to arrangements used by institutional investors and financial intermediaries for the registration of securities held by them for their own account or for the account of their customers who are the beneficial owners of securities.

[4] Street name registration, a specialized type of nominee registration, refers to the practice of a broker registering in its name, or in the name of its nominee, securities left with it by customers or held by it for its own account.

[5] Section 13(g) was added to the Exchange Act by the Domestic and Foreign Investment Disclosure Act of 1977 (the "Act") (Title II of Pub. L. No. 95-213). The Act also amended section 13(d)(1) and section 15(d) of the Exchange Act and added section 13(h) to the Exchange Act.

an interest and the nature of such interest. Section 13(g)(1) taken literally would require disclosure of the prescribed information, as well as that which may be required pursuant to the Commission's general rulemaking authority thereunder, regardless of whether the persons subject thereto are also required to report similar ownership information under other sections of the Exchange Act. Section 13(g)(5), however, directs the Commission to take such steps as are necessary and appropriate in the public interest and for the protection of investors to achieve centralized reporting of the information, to avoid unnecessary duplicative reporting, and to minimize the compliance burden on persons required to report. Moreover, the legislative history is clear that section 13(g) was intended to "supplement the current statutory scheme by providing legislative authority for certain additional disclosure requirements that in some cases could not be imposed administratively."[6] The principal effect of section 13(g), therefore, is to provide the authority necessary to close the gaps previously described in the disclosure requirements under section 13(d).[7]

II. Synopsis of Proposed Amendments to Rule and Schedule

A. Proposed amendment to rule 13d-1

In order to effectuate the Congressional purpose underlying section 13(g)(1), as described above, the Commission is proposing, inter alia, to recaption "Regulation 13D," "Regulation 13D-G" and to add a new paragraph (c) to Rule 13d-1 with the existing paragraph (c) and the succeeding paragraphs redesignated accordingly. Proposed Rule 13d-1(c) would require persons who own more than 5 percent of a class of security currently specified in Rule 13d-1(c), and who are currently not required to file under Rule 13d-1(a), to file a statement on Schedule 13G containing the information applicable to such persons. Generally, persons who are not required to file under Rule 13d-1(a) but who would be required to file a Schedule 13 G pursuant to amendments herein proposed are: (1) Those persons who acquired beneficial ownership of their securities prior to December 22, 1970, and therefore are exempt from Rule 13d-1(a) because they acquired their ownership prior to the date of the enactment of the 5-percent reporting threshold; (2) those persons who acquired not more than 2 percent of a class of securities within a 12-month period, who are exempt from Rule 13d-1(a) by section 13(d)(6)(B); and (3) those persons who acquired securities through a stock-for-stock exchange registered under the Securities Act who are exempted from Rule 13d-1(a) by section 13(d)(6)(A). Proposed Regulation 13D-G also would require any person "otherwise" not required to report pursuant to section 13(d), but who is a beneficial owner of more than 5 percent of a specified class of equity securities to report on Schedule 13G.

Proposed Rule 13d-1(c) would subject persons it covers to all of the rules in Regulation 13D-G. Thus, the determination of whether a person is a beneficial owner for the purpose of proposed Rule 13d-1(c) would be governed by Rule 13d-3(a). That Rule provides that a beneficial owner of a security includes any person who has or shares voting power and/or investment power with respect to such security. Voting power includes "the power to vote, or to direct the voting of such security" and investment power includes "the power to dispose, or to direct the disposition of such security." Under Rule 13d-3(d)(1)(i) a person is also deemed to be the beneficial owner of securities which he may acquire at any time within sixty days, subject to certain conditions. In addition, Rule 13d-3(c) provides that all securities beneficially owned by a person are to be aggregated in determining how may securities such persons owns, regardless of the nature of the beneficial ownership.

As indicated above, reporting under proposed Rule 13d-1(c) and under proposed Regulation 13D-G is directed to obtaining ownership information from persons who have the potential to change or influence control of the issuer. The Commission believes that, while section 13(g) is a disclosure provision of more general application than section 13(d), the possible affect on control is the aspect of beneficial ownership of greatest interest to issuers and investors.[9] Accordingly, the traditional economic interest in securities, i.e., the right to receive dividends and the right to receive proceeds upon sale, have not been included as criteria for defining beneficial ownership.

The legislative history of section 13(g) also stresses "the need to integrate and consolidate, wherever possible, the various reporting requirements of the Securities Exchange Act into a comprehensive system for gathering and disseminating information about ownership interests in public (sic) held companies."[10] Thus, section 13(g)(5) directs the Commission to take such steps as it deems necessary or appropriate in the public interest: To achieve centralized reporting of information regarding ownership; to avoid unnecessarily duplicative reporting by and minimize the compliance burden on persons required to report; and to tabulate and promptly make available the information contained in any report filed thereunder in a manner which will, in the view of the Commission, maximize the usefulness of the information.

Adoption of proposed Rule 13d-1(c) as part of proposed Regulation 13D-G would in the Commission's view, achieve the system contemplated by Congress for the reporting of beneficial ownership of the equity securities of public companies.

Regulation 13D-G should result in a minimum of duplication, although some duplication may be necessary to accomplish the differing regulatory objectives of the various sections of the Exchange Act requiring disclosure of ownership information. In order to minimize such duplication for persons who are required to report under sections 13(f) and 13(g), such persons would be permitted to respond to any of the items of Schedule 13G by incorporating by reference information contained in a report which is filed pursuant to section 13(f).

In light of the objective of obtaining ownership information directed to the ability to change or influence control, it is not feasible to integrate the reports filed pursuant to section 16(a) into the reporting system under proposed Regulation 13D-G. Section 16 is a prophylatic provision designed to prevent the use of inside information by certain insiders to derive windfall profits on purchases and sales of the issuer's securities within a 6-month period. The overriding concern under section 16 is with the economic incidents of ownership. Beneficial ownership is therefore defined differently for section 16 and for Regulation 13D-G in order to achieve their separate purposes. Thus, consolidation of the ownership information under the two sets of reports would be a matter of mixing two distinct concepts. Further difficulty in joining the two reporting systems is presented by the fact that section 16 has a 10-percent reporting threshold while sections 13(d) and 13(g) have a 5-percent threshold.

The Commission believes that the compliance burden on persons required to file Schedule 13G would be minimum, since the information called for is essentially the minimum statutory requirement. Moreover, it is to be filed annually within 45 days after the

[6] S. Rep. No. 114, 95th Congress, 1st session 13 (1977).

[7] Id.

[9] "The touchstone of the national disclosure policy in this area is the concept of control or potential control." Final report of the Securities and Exchange Commission on the Practice of Recording the Ownership of Securities in the Records of the Issuer in Other Than the Name of the Beneficial Owner of Such Securities, 94th Congress, 2nd session (Committee print 1976), at 50 n. 13.

[10] S. Rep. No. 550, 90th Congress, 1st session 14 (1967).

end of the calendar year. The expense of consolidating the necessary ownership information is also held to a minimum since a determination need only be made as of the last day of the calendar year.

Registrants which are required to file periodic reports under section 13 of the Exchange Act must set forth in Item 14 of their annual report on Form 10-K and in Item 5 of their proxy statement the name, address, number of shares owned, and the percent of the class represented by such shares for each person who beneficially owns more than 5 percent of a class of its securities. These registrants will be able to more accurately reflect such ownership information because all persons who own more than 5 percent of a class of an issuer's equity securities will be required to send a copy of his Schedule 13D or Schedule 13G to the issuer. Shareholders, interested members of the public, and government agencies will therefore be able to consult the ownership information prepared by the registrant and filed in its annual report or proxy statement for the purpose of identifying the substantial beneficial owners of a particular issuer. If further information is necessary with respect to such ownership, the statements (Schedules 13D and 13G) upon which the issuer based its disclosure may be examined in the Commission's public files.

The Commission will also explore in the coming months a computerized retrieval system for key ownership information. It is contemplated that the system might be indexed both for issuers and beneficial owners. Thus, information could be retrieved identifying the owners of a particular issuer, as well as identifying the section 13(d)(1) securities which a particular person owns.

B. PROPOSED AMENDMENT TO SCHEDULE 13G

Because persons who may be filing under proposed Rule 13d-(1)(c) may not have a business office, provision is proposed to be made in Item 2 of the schedule to permit them to state their residence address.

Persons who are currently eligible to file Schedule 13G are required to certify that the securities to which the Schedule relates were acquired in the ordinary course of business and not with the purpose or with the effect of changing or influencing control or as a participant in any transaction having such purpose or effect. The persons who would be filing Schedule 13G under proposed Rule 13d-1(c) would not, however, have to so certify because they are not required to satisfy the conditions in the certification in order to use the schedule. Accordingly, the introduction to the certification item is proposed to be amended to make it applicable only to persons filing pursuant to Rule 13d-1(b).

PROPOSED AMENDMENTS

(ATTENTION.—The text of the following proposed amendments uses ► ◄ arrows to indicate additions and [ ] brackets to indicate deletions.)

I. 17 CFR Part 240 is proposed to be amended by revising Regulation 13D in the following respects:

[REGULATION 13D]

►REGULATION 13D-G◄

Section 240.13d-1 is proposed to be amended to read as follows:

§ 240.13d-1 Filing of Schedules 13D and 13G.

(a) Any person who, after acquiring directly or indirectly the beneficial ownership of any equity security of a class which is specified in paragraph [(c)] ►(d)◄, is directly or indirectly the beneficial owner of more than 5 percent of such class shall, within 10 days after such acquisition, send to the issuer of the security at its principal executive office, by registered or certified mail, and to each exchange where the security is traded, and file with the Commission, a statement containing the information required by Schedule 13D [§ 240.13d-101]. Six copies of the statement, including all exhibits, shall be filed with the Commission.

(b)(1) A person who would otherwise be obligated under paragraph (a) to file a statement on Schedule 13D may, in lieu thereof, file with the Commission, within 45 days after the end of the calendar year in which such person became so obligated, six copies, including all exhibits, of a short form statement on Schedule 13G and send one copy each of such schedule to the issuer of the security at its principal executive office, by registered or certified mail, and to the principal national securities exchange where the security is traded: *Provided*, That it shall not be necessary to file a Schedule 13G unless the percentage of the class of equity security specified in paragraph [(c)]
►(d)◄ Beneficially owned as of the end of the calendar year is more than 5 percent: *And provided further*, That:

* * * * *

►(c) Any person who, as of December 31, 1978, or as of the end of any calendar year thereafter, is directly or indirectly the beneficial owner of more than 5 percent of any equity security of a class specified in paragraph (d) and who is not required to file a statement under paragraph (a) by virtue of the exemption provided by section 13(d)(6)(A) or (B) of the Act, or because such beneficial ownership was acquired prior to December 22, 1970, or because such person otherwise is not required to file such statement, shall, within 45 days after the end of the calendar year in which such person became obligated to report under this paragraph, send to the issuer of the security at its principal executive office, by registered or certified mail, and file with the Commission a statement containing the information required by Schedule 13G (§ 240.13g-101). Six copies of the statement, including all exhibits, shall be filed with the Commission.◄

[c]►(d)◄ For the purpose of this rule, the term "equity security" means any equity security of a class which is registered pursuant to section 12 of the Act, or any equity security of any insurance company which would have been required to be so registered except for the exemption contained in section 12(g)(2)(G) of the Act, or any equity security issued by a closed-end investment company registered under the Investment Company Act of 1940: *Provided*, Such term shall not include securities of a class of nonvoting options, warrants, rights, convertible debt, or convertible preferred securities.

[d]►(e)◄ For the purpose of sections 13(d) and 13(g), any person, in determining the amount of outstanding securities of a class of equity securities, may rely upon information set forth in the issuer's most recent quarterly or annual report, and any current report subsequent thereto, filed with the Commission pursuant to this Act, unless he knows or has reason to believe that the information contained therein is inaccurate.

[e]►(f)◄ (1) Whenever two or more persons are required to file a statement containing the information required by Schedule 13D or Schedule 13G with respect to the same securities, only one statement need be filed: *Provided*, That:

(i) Each person on whose behalf the statement is filed is individually eligible to use the schedule on which the information is filed;

(ii) Each person on whose behalf the statement is filed is responsible for the timely filing of such statement and any amendments thereto, and for the completeness and accuracy of the information concerning such person contained therein; such person is not responsible for the completeness or accuracy of the information concerning the other persons making the filing, unless such person knows or has reason to believe that such information is inaccurate; and

(iii) Such statement identifies all such persons, contains the required information with regard to each such person, indicates that such statement is filed on behalf of all such persons, and includes, as an exhibit, their

agreement in writing that such a statement is filed on behalf of each of them.

* * * * *

II. Item 7 of Schedule 13D (§ 240.13d-101) is proposed to be amended to read as follows:

ITEM 7. MATERIAL TO BE FILED AS EXHIBITS

The following shall be filed as exhibits: Copies of written agreements relating to the filing of joint acquisition statements as required by Rule 13d-1[(e)]►(f)◄(§ 240.13d-1[(e)]►(f)◄) and copies of all written agreements, contracts, arrangements, understandings, plans, or proposals relating to: (1) The borrowing of funds to finance the acquisition as disclosed in Item 3; (2) the acquisition of issuer control, liquidation, sale of assets, merger, or change in business or corporate structure, or any other matter as disclosed in Item 4; and (3) the transfer or voting of the securities, finder's fees, joint ventures, options, puts, calls, guarantees of loans, guarantees against loss or of profit, or the giving or withholding of any proxy as disclosed in Item 6.

* * * * *

III. Schedule 13G is proposed to be amended to read as follows:

§ 240.13d-102 Schedule 13G information to be included in statements filed pursuant to § 240.13d-1(b) ► and (c)◄ and amendments thereto filed pursuant to § 240.13d-2(b).

* * * * *

Items 2 and 10 of § 240.13d-102 are proposed to be amended to read as follows:

* * * * *

2(a) Name of person filing: ———————.

2(b) Address or principal business office ►or, if none, residence◄:———————.

2(c) Citizenship: ———————.

2(d) Title of class of securities: ———————.

2(e) CUSIP No.: ———————.

* * * * *

10. Certification. ►The following certification shall be included if the statement is filed pursuant to Rule 13d-1(b):◄

By signing below I certify that, to the best of my knowledge and belief, the securities referred to above were acquired in the ordinary course of business and were not acquired for the purpose of and do not have the effect of changing or influencing the control of the issuer of such securities and were not acquired in connection with or as a participant in any transaction having such purposes or effect.

(Secs. 3(b), 13(g)(1), 13(g)(2), 13(g)(5), 23(a); 48 Stat. 882, 901; Pub. L. 95-213 (December 19, 1977); sec. 203(a), 49 Stat. 704; sec. 8, 49 Stat. 1379; secs. 3, 18, 89 Stat. 97, 155 (15 U.S.C. 78c(b), 78w(a)).)

STATUTORY AUTHORITY

The foregoing proposed action is taken pursuant to the authority set forth in sections 3(b), 13(g)(1), 13(g)(2), 13(g)(5), and 23 of the Exchange Act.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

APRIL 21, 1978.

[FR Doc. 78-11535 Filed 4-27-78; 8:45 am]

FRIDAY, APRIL 28, 1978
PART IV

federal register

ENVIRONMENTAL PROTECTION AGENCY

■

Standards Applicable to Transporters of Hazardous Wastes

[6560-01]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 875-3]

[40 CFR Part 250]

STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE AND PUBLIC HEARING

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) issues proposed standards under section 3003 of the Solid Waste Disposal Act (the Act) prescribing procedures for recordkeeping, acceptance of hazardous waste for transport, compliance with the manifest system, delivery of the hazardous waste to a designated facility, spills, and placarding/marking of vehicles. In addition, EPA proposes that all hazardous wastes which meet the Department of Transportation's (DOT'S) definition of a hazardous material be subject to the Federal DOT Hazardous Material Regulations for both interstate and intrastate shipments. DOT is in the process of developing regulations which will include coverage of hazardous wastes. If DOT develops standards similar to those proposed by EPA, the EPA hazardous waste transportation standards will be modified to reflect the DOT Hazardous Materials Regulations or will reference the DOT Hazardous Materials Regulations. These proposed standards are applicable to transporters of hazardous waste, and they are being issued to protect human health and the environment.

EPA will be issuing additional proposed regulations for hazardous waste at a later date. For details concerning dates and hearings on these future proposed regulations see supplementary information.

DATES: Comments requested on or before June 27, 1978. Hearing: First joint hearing with DOT is scheduled for June 20, 1978.

For details concerning for comment due date and hearings on this proposed regulation, see supplementary information.

ADDRESSES: Comments to: Deputy Assistant Administrator for Solid Waste (WH-562), U.S. Environmental Protection Agency, Washington, D.C. 20460. Communications should identify the regulatory docket or notice number, which is Section 3003 for these proposed standards.

Official record for this rulemaking available at: Room 2111D, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding holidays.

Hearing: First joint hearing with DOT is scheduled for June 20, 1978, at the Holiday Inn, Old Town, 480 King Street, Alexandria, Va., 703-549-6080.

FOR FURTHER INFORMATION CONTACT:

Mr. Arnie Edelman, 202-755-9187.

SUPPLEMENTARY INFORMATION: Dates—EPA will propose all hazardous waste regulations under Subtitle C during the spring and summer of 1978. Since certain Sections will be ready for proposal ahead of others, EPA will propose each Section as it becomes available. Comments concerning Section 3003 standards would be appreciated by June 27, 1978. However, the comment period for all Sections (3001-3005), will remain open until at least 60 days after the last Section is proposed in the FEDERAL REGISTER. This will enable those who would prefer to comment on all five Sections at the same time to do so. A notice announcing the closing date for all Sections will be published in the FEDERAL REGISTER upon publication of the last Section.

HEARING: Public hearings on all Subtitle C proposed regulations (3001-3005) will be held during the summer of 1978. The dates of the public hearings will be announced in the FEDERAL REGISTER. EPA and DOT plan to hold joint public hearings on these regulations. The first joint hearing with DOT is scheduled for June 20, at the Holiday Inn, Old Town, 480 King Street, Alexandria, Va., 703-549-6080. Additional EPA/DOT hearing dates will be announced in the FEDERAL REGISTER to coincide with the public hearings that will be held on Sections 3001 and 3002.

Oral or written comments may be submitted at the public hearing on these proposed standards. Registration for the hearing will be held between 8:30 and 9 a.m. Requests to participate in the public hearing should be directed to: Ms. Gerri Wyer, Public Participation Officer, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, Washington, D.C. 20460, 202-755-9157.

FOR FURTHER INFORMATION CONTACT:

Mr. Arnie Edelman, Hazardous Waste Management Division, Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, Washington, D.C. 20460, 202-755-9187.

Subtitle C of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (Pub. L. 94-580) (hereinafter RCRA), creates a regulatory framework to control hazardous waste. Congress has found that such waste presents "special dangers to health and requires a greater degree of regulation than does non-hazardous solid waste" (Section 1002(b)(5)). Because of the seriousness of this waste problem, Congress intended that the States develop programs to control it. In the event that States do not choose to operate this program, EPA is required to do so.

This rule is one of a series of seven being developed and proposed under Subtitle C to implement the hazardous waste management program. It is important to note the broad definition of solid waste (Section 1004(27)) which encompasses (with a few exceptions) garbage, refuse, sludges, and other discarded materials including liquids, semi-solids, and contained gases from both municipal and industrial sources. Hazardous wastes, which are a subset of all solid wastes, are those which have particularly significant impacts on public health and the environment.

Subtitle C, then, creates a management control system which, for those wastes defined as hazardous, requires "cradle-to-grave" cognizance including appropriate monitoring, recordkeeping, and reporting throughout the system. Section 3001 defines the criteria and characteristics for identifying and listing hazardous wastes. Those wastes which are identified as hazardous by these means are included in the management control system contructed under Sections 3002-3006 and 3010. Those that are excluded will in any case be subject to the requirements being carried out by States under Subtitle D, under which open dumping is prohibited and environmentally acceptable practices are required.

Section 3002 addresses the standards applicable to generators. The Agency does not interpret the intent of Congress to include in this category individual homeowners. Section 3002 requires the creation of a manifest system which will track wastes from the point of generation to their ultimate disposition.

Section 3003 addresses standards affecting transporters of hazardous wastes to assure that wastes are carefully managed during the transport phase. The Agency is exploring opportunities for meshing closely with proposed and current DOT regulations to avoid duplication in this area.

Section 3004 addresses standars affecting owners and operators of hazardous waste storage, treatment, and disposal facilities. These standards define the levels of environmental protection to be achieved by these facilities and provide the criteria against which EPA (or State) officials will measure applications for permits. Facilities on the generator's property, as well as off-site facilities, are covered by these regulations and will require permits. Generators and transporters who do not treat, store, or dispose of hazardous wastes do not need permits.

Section 3005 describes the scope and coverage of the actual permit-granting

process for facility owners and operators. Requirements for the permit application, as well as for the issuance and revocation process, are defined by these regulations. Section 3005(c) provides for interim permitted status during the time period in which the Agency or State is reviewing the pending permit applications.

Section 3006 requires EPA to issue guidelines for State programs and procedures by which States may seek both full and interim authorization to carry out the hazardous waste program in lieu of an EPA-administered program.

Section 3010 defines procedures by which any person generating, transporting, owning or operating a facility for storage, treatment, and disposal of hazardous waste must notify EPA of this activity within 90 days of promulgation of regulations defining any hazardous waste (section 3001). Certain States will be authorized to perform this function upon application to the Administrator. It is significant to note that no hazardous waste subject to Subtitle C regulations may be legally transported, treated, stored, or disposed, nor may interim permits be issued, unless this timely notification is given to EPA or a designated State. After this 90-day notification period, transporters will need to comply with 250.32, which requires transporters to obtain an identification code from EPA or an authorized State.

Sections 3001, 3002, 3004, and 3005 standards are expected to be proposed during the summer of 1978. The Agency intends to promulgate final regulations by the fall of 1978 for all of these sections of Subtitle C. However, it is important for the regulated communities to understand that the regulations (sections 3002-5) do not take effect until six months after promulgation. Thus, there will be a time period after final promulgation during which public understanding of the regulations can be increased and those covered by the regulations can prepare to comply. During this same period, notifications required under section 3010 and permit applications required under section 3005 can be distributed for completion by applicants.

Table I appearing below cross references the numbered sections of RCRA to the Subpart designations to be used in the regulations:

TABLE I

Solid Waste Disposal Act.
Subtitle C—Numbering System.
Subpart A—Section 3001 Standards for Criteria, Identification, and Listing of Hazardous Waste.
Subpart B—Section 3002 Standards Applicable to Generators.
Subpart C—Section 3003 Standards Applicable to Transporters.
Subpart D—Section 3004 Standards for Owners and Operators of Treatment Storage, and Disposal Facilities.
Subpart E—Section 3005 Permits for Treatment, Storage, or Disposal.
Subpart F—Section 3006 Guidelines for Authorized State Programs.
Subpart G—Section 3010 Preliminary Notification of Hazardous Waste Activities.

BACKGROUND

In developing these standards for transporters of hazardous waste, the Environmental Protection Agency has solicited comments, data, opinions, and suggestions from the regulated community (i.e., hazardous waste generators, transporters, operators of treatment and disposal facilities), States, and the public on the major issues confronting EPA as part of the regulation development process. This effort has included the publication of an Advance Notice of Proposed Rulemaking (ANPR) 42 FR 22332 (May 2, 1977), a series of 13 public meetings with a total attendance of over 1,000 people, and the review of the draft regulations by representatives from the public, public interest groups, State and local governments, transporters, generators, and disposers of waste. All comments were reviewed and considered by EPA before proposing these standards for hazardous waste transportation.

Compliance with these hazardous waste transportation regulations (which include by reference most of CFR 46 and CFR 49) by no means exempts the transporter from compliance with the requirements of other Federal, State, or local regulations.

Section 3003(a) of the Act directs the Administrator to promulgate regulations establishing standards applicable to transporters of hazardous wastes "as may be necessary to protect human health and the environment." Such standards shall include but need not be limited to recordkeeping, transportation of properly labeled wastes, compliance with the manifest system, and delivery of the hazardous waste only to a permitted facility. Section 3003(b) states that in case any hazardous waste identified or listed by EPA is subject to the Hazardous Materials Transportation Act (88 Stat. 2156; 49 U.S.C. 1801 and following), the Subtitle C regulations promulgated by the Administrator shall be consistent with the Department of Transportation's (DOT's) Hazardous Materials Regulations. The Administrator is authorized to make recommendations to the Secretary of Transportation concerning the regulations of hazardous waste.

The criteria for identifying and listing hazardous waste, as developed under section 3001 of the Act, will take into account toxicity, persistence, degradability in nature, potential for accumulation in tissue, flammability, corrosiveness, and other hazardous characteristics.

Hazardous wastes defined or listed under Section 3001 may include hazardous materials as defined by DOT or "hazardous substances" as defined by EPA under the Federal Water Pollution Control Act. DOT has designated material as hazardous upon finding that the transportation of a material in commerce may pose an unreasonable risk to health and safety or property (49 CFR 171.8). The criteria and testing methods to evaluate whether or not a material is hazardous are found in 49 CFR 173. The following have been designated as classes of hazardous materials by the Secretary of Transportation: Explosives, Combustible Liquids, Corrosive Materials, Flammable Liquids, Flammable Gases, Nonflammable Gases, Flammable Solids, Organic Peroxides, Oxidizers, Poisons, Irritating Materials, Etiologic Agents, and Radioactive Materials.

Regulations defining hazardous substances under Section 311 of the Federal Water Pollution Control Act are found under 40 CFR 116. The Administrator is required to designate hazardous substances that present an imminent and substantial danger to the public health or welfare when discharged in any quantity into or upon the waters of the United States.

EPA AND DOT COORDINATION

The standards set forth under section 3003 are consistent with standards developed under the Hazardous Materials Transportation Act (49 CFR 100-189).

After lengthy discussions between EPA and DOT, DOT has expressed a strong interest in broadening its Hazardous Materials Regulations to include most or all of EPA's proposed hazardous waste regulations. Depending on DOT's actions, EPA may eventually jointly promulgate with DOT, modify these proposed regulations, or adopt forthcoming DOT regulations. EPA and DOT intend to jointly enforce any DOT regulations governing transportation of hazardous waste.

COMPLIANCE WITH U.S. DOT HAZARDOUS MATERIALS REGULATIONS

According to a recent interpretation by the Office of Hazardous Materials Operations (DOT), any material, including waste, which meets the DOT criteria of a hazardous material must be handled according to DOT regulations.

The Office of Hazardous Materials newsletter of April/May 1977 states:

There have been numerous inquiries to the Office of Hazardous Materials Operations regarding the applicability of the Department's Hazardous Materials Regulations to the Transportation of waste materials. These regulations are structured to apply to any materials that may pose an undue hazard in transportation and, as such, do not differentiate between waste and other than waste materials. If, after processing, a material meets the definition

of a hazardous material, then that material must be classed and shipped in accordance with the requirements prescribed for the hazard associated with the material. Many materials, including those considered waste materials, may have more than one hazard and certain other materials may lose their hazardous characteristics due to processing. A mixture of materials, both waste and other than waste, must be properly evaluated to determine its characteristics, since, after processing, a mixture may become more or less hazardous than it was prior to processing.

The Department's Hazardous Materials Regulations may apply to any material regardless of its end use; the fact that material is considered a waste material does not relieve application of these (DOT) regulations.

DOT's current Hazardous Materials Transportation Regulations only apply to transporters engaged in interstate or foreign commerce and the shippers who use them. However, some intrastate shipments are regulated by States that have adopted the Federal regulations or have similar regulations. In the above cases, the shipper usually is responsible for proper description of the hazardous material, proper labeling, packaging, and placarding.

DOT regulations applicable to transporters are found in the Code of Federal Regulations Title 49, parts 171 (General Information, Regulations, and Definitions); 174 (Carriage by Rail); 175 (Carriage by Aircraft); 176 (Carriage by Vessel); 177 (Carriage by Public Highway). Bulk shipments of hazardous materials by vessel are governed by the following DOT regulations: 46 CFR 30-40 (Tank Vessels); 64 (Marine Portable Tanks); 98 (Bulk Cargos); 148 (Solids in Bulk); and 151 (Unmanned Barges). Each of these standards contains regulations for acceptance of materials for transportation, loading, unloading, handling, storage of hazardous materials, leaking containers, accident/spill reporting requirements, containerization, and detailed requirements for specific classes of hazardous materials.

EPA's proposed regulations require that when a material is both a hazardous waste as defined by EPA and a hazardous material as defined by DOT, the provisions of the U.S. DOT Hazardous Materials Regulations must be complied with for intrastate as well as interstate transportation.

For those hazardous wastes not currently subject to the DOT Hazardous Materials Regulations (primarily toxic materials), EPA recognizes DOT's primary mandate for the development of standards concerning the safety aspects of loading, unloading, and handling of materials in transportation. Since EPA anticipates that DOT will redefine hazardous materials to include all hazardous wastes, EPA has determined that DOT should develop such safety standards.

To the extent that problems are identified by EPA and DOT regarding additional measures needed for safety in transportation for these newly covered wastes, the two Agencies will develop appropriate revisions to the currently anticipated rulemakings. Comments are requested concerning the additional safety measures that may be needed for the safe transportation of these hazardous wastes.

Scope of Regulations

EPA's transportation standards do not apply to every shipment of hazardous waste. They only apply when a manifest is required under regulations to be proposed under Section 3002 of the Act. The manifest is the form used for identifying the quantity, composition, and the origin, routing, and destination of the hazardous waste. A manifest will not be required under Section 3002 for transport on the same premises where the waste is generated, treated, stored, or disposed. In such cases, the waste must be properly labeled, contained, treated, stored, or disposed.

Even though a manifest is not required for certain shipments of hazardous waste, transporters who consolidate shipments of hazardous wastes are required under Section 250.30 to deliver the shipment to a permitted facility. In addition such transporters must comply with the applicable DOT Hazardous Materials Regulations concerning shipping papers, labeling, marking, placarding and transportation (49 CFR 100-189).

Identification Code

Section 250.32 of these regulations will require that every transporter of hazardous waste must furnish information to EPA or an authorized State concerning its hazardous waste transportation activity. Upon submission of this information, the transporter will be issued an identification code. The identification code will in most cases be identical to existing codes assigned to transporters by Federal or State agencies. Generators and shippers of hazardous waste will not be permitted to use transporters who do not have such code. The identification code should not be construed as either a seal of approval by EPA or the issuance of a license or permit.

Recordkeeping

Section 3003 of the Act requires that records be kept concerning hazardous waste transported and its origin and destination. In current transport practice, records are often kept (as required by the State public utility commissions or public service commissions and the Interstate Commerce Commission) in the forms of bills of lading, waybills, or invoices. These documents include the following information: the shipper's name and address; the transporter's name and address; the consignee; the quantity of the material; and a description of the material.

To avoid duplication, EPA has tailored its recordkeeping requirements to the existing shipping papers. The Agency requires that a record be kept indicating the origin and destination of each shipment of the waste, the date of pick-up, quantity of waste transported, a description of the waste and a certification that the waste has been transferred to another transporter or delivered to a permitted facility. In most cases, the record will be a copy of the manifest or "delivery document" with the above information. (EPA uses the term delivery document to refer to all forms of shipping papers which contain the above information.) The transporter is required to retain a copy of this record for a three-year period.

Acceptance of Hazardous Waste For Transport

Under the Hazardous Materials Regulations, a transporter cannot accept a hazardous material for transport unless it is properly described, labeled, packaged, and placarded. EPA has developed similar shipping and acceptance regulations for hazardous wastes. Under regulations to be proposed under section 3002 of the Act, the generator is required to certify that the hazardous waste is properly prepared for transportation.

As a service to the generator, the transporter may prepare a manifest (the generator must sign the certification), label, and package the hazardous waste. However, since the generator is responsible for these functions under Section 3002 of the Act, the generator may arrange with the transporter to privately indemnify the generator against financial loss due to improper performance.

Loading and Stowage for Transportation

For substances which are both hazardous materials under DOT regulations and hazardous wastes under EPA regulations, EPA in Section 250.30 has adopted DOT regulations regarding loading and stowage. These regulations will apply to intrastate as well as to interstate transportation.

Mixing of wastes which results in the generation of gases, explosion, or fire is prohibited by DOT regulations (which are adopted by reference in Section 250.34). If other hazardous wastes from different generators or separate wastes from the same generator are mixed, and the manifest no longer identifies the composition of the waste shipment, the transporter will be considered a generator, and therefore required to comply with the

standards for generators as contained in Subpart B.

Compliance with the Manifest

The manifest system developed under Section 3002 of the Act is intended to track the movement of the hazardous waste from the generator to the ultimate disposal site. A manifest need not accompany the shipment of hazardous waste if information contained on the manifest accompanies it in another form, e.g., a bill of lading or hazardous material shipping paper. Signatures on the manifest or delivery document will certify the transfer of the hazardous waste from the generator to the transporter(s), and finally, acceptance by the hazardous waste management facility.

If the transporter of the waste transfers it to another transporter using a different mode of transportation or, with respect to air and highway, between different transporters using the same mode, the manifest or the delivery document will require the signature of each transporter.

Upon delivery, one copy of the signed manifest or delivery document is retained by the transporter; another copy is forwarded by the hazardous waste management facility to the generator.

Delivery of Hazardous Wastes

The transporter must deliver all hazardous waste to a permitted hazardous waste management facility designated by the generator. If the transporter removes the hazardous waste from the transport vehicle and stores, consolidates or mixes it with another waste, the transporter will be required to comply with standards developed under Sections 3002 and 3004 and receive a permit for the facility from EPA or an authorized State.

Prior to acceptance of the hazardous waste, the transporter should contact the facility designated by the generator to determine its operating hours. Deliveries of hazardous waste to facilities after operating hours should be avoided.

If, for any reason the waste management facility cannot accept the hazardous waste, the transporter should ask the generator whether the hazardous waste shipment should be returned or delivered to an alternative facility. (Under Section 3002 of the Act, EPA intends to allow the generator of the hazardous waste to specify in advance alternative facilities on the manifest.) The transporter should provide advance notice to the alternate facility prior to taking the waste shipment there.

Spills

These regulations provide for the expeditious handling of a spill of a hazardous waste or a hazardous material (which, when spilled, becomes a waste). When a spill requires immediate removal (as determined by EPA, other Federal Agencies, or a State or local authorized official), due to a threat of imminent hazard to human health or the environment, EPA's standards concerning identification codes for transporters, recordkeeping, acceptance of the hazardous wastes, compliance with the manifest, delivery to the designated facility, and placarding and marking of vehicles will be suspended until the spill is cleaned up, rendered non-hazardous, or determined to no longer present an imminent hazard to human health or the environment (as determined by EPA, other Federal Agencies, or a State or local authorized official). When a spill occurs, these proposed standards require the transporter to: (a) telephone the National Response Center (NRC); (b) file a written report on the spill to the DOT using the DOT Hazardous Materials Incident Report; and (c) clean up the spill, or take such action as may be required by Federal, State, or local agencies so that the waste no longer presents a hazard to human health or the environment.

EPA is proposing the use of the existing 24-hour emergency NRC phone number for telephone calls relating to hazardous waste spills. Once the NRC is notified, the appropriate Federal and State agencies will be contacted. (Transporters may also be subject to State telephone notification requirements in the event of a spill.) Every spillage of a hazardous waste during transportation regardless of quantity will require a telephone contact to the NRC.

EPA has adopted 49 CFR 171.16 to govern the written reporting of hazardous waste spills. Title 49 CFR 171.16 requires a transporter of hazardous materials to report in writing within 15 days to the U.S. Department of Transportation each incident (including spills) that occurs during the course of loading, transport, or unloading.

Spill reports are important to allow EPA to evaluate current regulations concerning the handling and packaging of hazardous wastes and monitoring of environmental damage. In filling out the DOT Hazardous Materials Incident Report, the transporter should indicate if the spilled hazardous waste entered a water body, public drinking water supply or groundwaters, destroyed vegetation or wildlife, or produced any other harmful effects on the environment. The transporter should also estimate the total quantity of the material removed from the spill site and describe its final disposition. If it was delivered to a permitted hazardous waste management facility, the permit number should be included. If any residual remains, the quantity should be estimated and the transporter should describe any actions taken to reduce the hazardousness of the waste, including actions required by Federal, State, or local agencies.

Marking of Vehicles

The ICC and DOT currently require motor vehicles involved in the interstate transport of hazardous materials to be marked with the name and home office of the transporter. EPA has adopted this requirement for all hazardous waste transporters whose vehicles require DOT placarding or carry more than 1,000 pounds of hazardous waste. If there is an emergency and the manifest or delivery document is not available, such marking enables the public or emergency response personnel to contact the transporter's home office to determine the contents of the shipment.

Placarding of Vehicles

For hazardous wastes which meet DOT's definition of a hazardous material, EPA has adopted existing DOT placarding requirements. Vehicles containing certain hazardous wastes which are toxic, bioaccumulative, carcinogenic, or may cause genetic change are not now required to be placarded by DOT. EPA is considering recommending to DOT the development of a new placard for such substances. Comments on the need for such a placard are requested.

Permitting Transporters

Several States, public interest groups, waste management representatives, and transporters recommended that a permitting system for transporters of hazardous wastes be developed by EPA. Such a permitting system would serve two purposes: to identify and collect data on hazardous waste transporters, and to enable the permitting agency to revoke the permit in the event of misconduct.

After reviewing the legislative history of the Solid Waste Disposal Act, EPA has found no Congressional intent to authorize it to require a permit system for transporters. Although section 3003 generally calls for promulgating "regulations establishing such standards applicable to transporters of hazardous waste identified or listed under this subtitle, as may be necessary to protect human health and the environment," Section 3005, which sets out the permit requirements, is directed only toward owners and operators of facilities for the treatment, storage, or disposal of hazardous waste, and not toward transporters. Moreover, the States and the Interstate Commerce Commission currently regulate (often by permit)

many transporters of hazardous wastes directly. Therefore, at this time, EPA will not develop an EPA transporter permitting program.

REFERENCES TO SECTION 3002 STANDARDS

In the following proposed standards, references are made to the standards being developed for a manifest system and for labeling practices under section 3002.

Section 250.22 describes standards for the manifest system. The manifest is designed to provide information on the movement of hazardous waste from the point of generation to the designated permitted hazardous waste management facility. To be consistent with DOT requirements for hazardous materials, EPA requirements are similar to the DOT shipping paper requirements. The manifest is envisioned as a shipping document that does not leave commercial channels and takes the basic form of the standard Bill of Lading.

Section 250.26 describes standards for labeling containers of hazardous wastes. Any hazardous waste which is also a DOT hazardous material must be labeled and marked in accordance with the DOT regulations. In addition to the DOT requirements, EPA is considering a marking that will identify the generator and (for individual packages) the manifest number for the shipment of hazardous waste.

A reporting impact analysis is being performed for the substantive environmental regulations to be published under RCRA Subtitle C, Hazardous Waste Management in conjunction with a data processing system feasibility study. These proposed standards will require the transporter, in the event of a spill of hazardous waste, to telephone the NRC and submit a written report to DOT. The written report uses the existing DOT Hazardous Materials Incident Report with supplemental information required. It is anticipated that cost for compliance is minimal. The cost of the report preparation (clerical and management) and phone notification is estimated to be no more than $100 per year per vehicle involved in a spill of hazardous waste.

ECONOMIC AND ENVIRONMENTAL IMPACTS

In accordance with Executive Order 12044 and 11821 as amended by Executive Order 11949, and OMB Circular A-107 and EPA policy as stipulated in 39 FR 37419, October 21, 1974 respectively, analyses of the economic and environmental impacts are being performed for the entirety of Subtitle C, Hazardous Waste Management, and are not completed as yet. However, a separate report on the cost of compliance with section 3003 proposed standards has been prepared. It is anticipated that the cost of compliance is minimal due to the extent of existing ICC, DOT, and State regulations; and the nature of the transport activity, which includes significant loading and unloading times, during which manifest compliance activities can usually be accomplished.

The Draft EIS will be released for public comment 30 days after the last Subtitle C regulation is proposed. Copies of the EIS and the economic analysis will be available for review through the Office of Solid Waste.

Dated: April 21, 1978.

BARBARA BLUM,
Acting Administrator.

Title 40, Code of Federal Regulations, Part 250 would be amended, by adding a Subpart C consisting of §§ 250.30-250.38 as follows:

PART 250—HAZARDOUS WASTE GUIDELINES AND REGULATIONS

Subparts A-B—[Reserved]

Subpart C—Standards Applicable to Transporters of Hazardous Wastes

Sec.
250.30 Scope.
250.31 Definitions.
250.32 Identification code.
250.33 Recordkeeping.
250.34 Acceptance and transport of hazardous waste.
250.35 Compliance with the manifest.
250.36 Delivery of hazardous wastes to a designated permitted facility.
250.37 Spills.
250.38 Placarding/marking of vehicles.

Subparts D-E—[Reserved]

* * * * *

Subpart G—[Reserved]

AUTHORITY: Secs. 2002(a) and 3003, Pub. L. 94-580, 90 Stat. 2804, 2807 (42 U.S.C. 6912, 6923).

§ 250.30 Scope.

(a) These regulations establish standards which apply to any person or Federal agency that transports hazardous waste within the United States which requires a manifest as specified under subpart B of this part or any transporter importing a shipment of hazardous waste from abroad. If a manifest is not required, any person or Federal agency that consolidates for shipment and transports hazardous waste shall deliver the entire quantity of hazardous waste(s) to a facility permitted under subpart E of this part and shall comply with the DOT regulations listed in 250.30(c).

(b) These regulations do not apply to persons or Federal agencies that transport hazardous waste(s) on the site of a hazardous waste generator or permitted hazardous waste management facility.

(c) If hazardous waste identified or listed under subpart A of this part also meets the definition and criteria for hazardous materials of the Department of Transportation (49 CFR 171.8 and 173), the following regulations of the Department of Transportation will apply for both intrastate and interstate transportation: 49 CFR 171, General Information, Regulations, and Definitions; 49 CFR 174, Carriage by Rail; 49 CFR 175, Carriage by Aircraft; 49 CFR 176, Carriage by Vessel; 49 CFR 177, Carriage by Public Highway; 46 CFR 30-40, Tank Vessels; 46 CFR 64, Marine Portable Tanks; 46 CFR 98, Bulk Cargos; 46 CFR 148, Solids in Bulk; and 46 CFR 151, Unmanned Barges.

§ 250.31 Definitions.

For purposes of this part, all terms not herein defined shall take the meaning given them by the Solid Waste Disposal Act (Pub. L. 94-580).

(a) "Delivery document" means a shipping paper (bill of lading, waybill, dangerous cargo manifest, or other shipping document) used in lieu of the orginal manifest to fulfill the recordkeeping requirement of § 250.33.

(b) "Generator" means any person defined as a generator in regulations under subpart B of this part.

(c) "Hazardous material" means a substance or material which has been determined by the Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated under 49 CFR 171.8 and 173.

(d) "Identification code" means the unique code assigned to each transporter of hazardous waste by EPA or an authorized State upon notification in accordance with subpart G of this part or upon compliance with § 250.32 of this subpart.

(e) "Manifest" means the form used for identifying the quantity, composition, and the origin, routing and destination of hazardous waste as specified in regulations under § 250.22, subpart B of this part.

(f) "Mode" means any of the folowing transportation methods: Rail, highway, air, or water.

(g) "Motor vehicle" means a vehicle, machine, tractor, trailer, or semitrailer, or any combination thereof, propelled or drawn by mechanical power and used upon the highways in transportation. It does not include a vehicle, locomotive, or car operated exclusively on a rail or rails.

(h) "On the site" means on the same or geographically contiguous property. Two or more pieces of property which are geographically contiguous and are divided only by public or private right(s)-of-way are considered a single site.

(i) "Permitted hazardous waste management facility" (or "permitted facility") means a hazardous waste treat-

ment, storage, or disposal facility that has received an EPA permit in accordance with the requirements of subpart E of this part or a permit from an authorized State agency.

(j) "Spill" means any accidental discharge of a hazardous waste onto or into the land or water.

(k) "Transporter" means a person or Federal agency engaged in the transportation of hazardous waste by air, rail, highway, or water.

(l) "Transport vehicle" means a motor vehicle, rail freight car, freight container, cargo tank, portable tank, or vessel (as defined in 49 CFR 171.8) used for the transportation of hazardous waste.

(m) "United States" means the 50 States, District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

§ 250.32 Identification code.

Any transporter who transports or intends to transport hazardous waste within the United States shall comply with §§ 250.822 and 250.823 to obtain an identification code from the Environmental Protection Agency or an authorized State. The identification code issued shall be included on:

(a) The manifest (§ 250.22);

(b) The hazardous materials incident report (§ 250.37); and

(c) The delivery document (§ 250.35(c)).

§ 250.33 Recordkeeping.

Each transporter shall maintain a copy of the manifest or delivery document for a period of not less than 3 years from date of either transfer of the hazardous waste to another transporter or delivery of the hazardous waste to a permitted facility as indicated on the manifest or the delivery document.

§ 250.34 Acceptance and transport of hazardous waste.

(a) A transporter shall not accept from a generator a shipment of hazardous waste without a manifest signed by the generator in accordance with the provisions of § 250.22.

(b) A transporter shall not transport a shipment of hazardous waste from a generator without signing the manifest acknowledging acceptance of the hazardous waste shipment.

(c) If a shipment of hazardous waste is transported by more than one transporter, subsequent transporters shall not accept for transport or transport the hazardous waste shipment without a manifest or shipping document that contains the information on the manifest in accordance with the provisions of § 250.22.

(d) A transporter shall not transport a shipment of hazardous waste in containers not properly labeled or marked in accordance with the provisions of § 250.26:

(1) If the DOT label is lost or detached, the transporter must replace that DOT label in accordance with the provisions of § 250.26.

(2) The DOT replacement label must be based on the information taken from the manifest covering the shipment.

(e) A transporter shall not transport containers which are leaking or appear to be damaged. In the event that leakage develops or is discovered during transportation and the leakage results in a spill, the transporter shall comply with 250.37.

(f) A transporter shall not accept or consolidate hazardous waste(s) consisting of a material or mixture of materials that is prohibited from transportation by 49 CFR 173.21.

§ 250.35 Compliance with the manifest.

(a) Each transporter shall assure that a copy of the manifest or the information contained on the manifest (in the form of, e.g., a hazardous materials shipping paper, bill of lading, waybill) at all times accompanies the shipment of hazardous waste.

(b) If the hazardous waste shipment is transferred between the different modes (air, rail, highway, or water) or between different transporters using the air or highway mode, each transporter and each subsequent transporter shall sign the manifest or delivery document acknowledging acceptance of the shipment before the hazardous waste can be transported.

(c) The delivery document shall:

(1) Contain as a minimum, the following information:

(i) Name, address of transporter;

(ii) Name, address, identification code of generator;

(iii) Name, address, identification code of designated permitted facility;

(iv) Corresponding manifest document number; and

(v) Description and quantity of hazardous waste.

(2) Only be used when the original manifest is not with the shipment of hazardous waste.

(d) The transporter shall, upon delivery of the hazardous waste to the designated permitted facility, obtain the signature of an authorized agent of the permitted facility on the manifest or delivery document certifying delivery.

(1) If a delivery document is used in lieu of the manifest, the transporter shall issue three copies of the delivery docuent to the designated permitted facility for signature. The transporter shall retain one of the signed copies as required by 250.33.

(2) If the transporter cannot acquire immediate certification, the transporter shall:

(i) Indicate on the manifest or delivery document the following:

(A) Time and date of delivery; and

(B) Reason manifest or delivery document could not be certified upon delivery; and

(ii) Acquire certification on the manifest or delivery document by an authorized agent of the permitted facility as soon as possible, but not to exceed 5 working days after delivery of the shipment.

§ 250.36 Delivery of hazardous wastes to a designated permitted facility.

(a) The transporter shall deliver the entire quantity of hazardous waste(s) accepted from a generator or a transporter to a permitted facility designated by the generator on the manifest.

(b) If the transporter removes the hazardous waste from a transport vehicle or aircraft for purposes of blending, mixing, treating, or storing, the blending, mixing, treating, or storing shall be done at a permitted facility.

(c) If hazardous wastes from different generators or separate wastes from the same generator becomes mixed after having been accepted by the transporter, the transporter shall comply with the generator standards under subpart B of this part unless the transporter can demonstrate that the information designated on the manifest(s) under § 250.22 (a) (5), (6) of subpart B of this part still identifies the hazardous waste.

§ 250.37 Spills.

(a) If a spill of hazardous waste requires immediate removal to protect human health or the environment (as determined by EPA, other Federal agencies, or a State or local authorized official), the requirements of this section shall apply in lieu of §§ 250.32, 250.33, 250.34, 250.35, 250.36, and 250.38 of this subpart until the spilled hazardous waste no longer presents an immediate hazard to human health or the environment (as determined by EPA, other Federal agencies, or a State or local authorized official).

(b) In the event of any spill of hazardous waste during transportation, the transporter shall:

(1) Telephone immediately:

(i) The National Response Center, U.S. Coast Guard, toll free, 800-424-8802; or

(ii) The government official predesignated in the applicable regional contingency plan pursuant to 40 CFR 1510 as the on-scene coordinator for the geographic area in which the incident occurs.

(2) Furnish the following information upon notification:

(i) Name of person reporting the spill;

(ii) Name and address of transporter;

(iii) Name and address of generator;

(iv) Phone number where reporter can be contacted;

(v) Date, time, and location of incident, (indicate pollution of land, water, air, or public water supply, if known);

(vi) Type of transport vehicle and mode;

(vii) Type of incident (e.g., fire, breakage, spillage);

(viii) Classification, name, and quantity of hazardous waste involved, to the extent available; and

(ix) The extent of injuries, if any.

(3) File within 15 days a written report in duplicate with the Director, Office of Hazardous Materials Operations, Materials Transportation Bureau, Department of Transportation, Washington, D.C. 20590, on each spill that occurred during the course of transportation. DOT form F 5800.1[1] shall be utilized as a basic reporting document; item A 1.6 shall be filled in as "waste"; item B4 shall include the transporter's identification code. In addition under part H of DOT form 5800.1, the following information shall be included:

(i) If known, location of spill in relation to surface waters, public water supply, groundwater, wildlife habitats, and agricultural production areas;

(ii) Quantity of material removed and disposition of the material; and

(iii) Disposition and quantity of unremoved material.

(c) The transporter shall clean up all the spilled hazardous waste or take such action as may be required by Federal, State, or local agencies so that the spilled hazardous waste no longer presents a hazard to human health or the environment.

§ 250.38 Placarding/marking of vehicles.

(a) A transporter shall not move a transport vehicle containing hazardous waste which is also a DOT hazardous material unless it is placarded in accordance with 49 CFR 172, subpart F. This prohibition applies to both intrastate and interstate transportation.

(b) A transporter shall mark each motor vehicle being operated under its own power for the transportation of hazardous waste if the motor vehicle is required to be placarded or if the motor vehicle contains greater than 1,000 pounds of hazardous waste. The marking shall display the following information:

(1) Name of transporter under whose authority the vehicle is being operated; and

(2) The city or community in which the carrier maintains its principal office or in which the vehicle is customarily based.

(i) The marking must:

(A) Appear on both sides of the vehicle;

(B) Be in letters that contrast sharply in color with the background; and

(C) Be readily legible during daylight hours from a distance of 50 feet while the vehicle is stationary.

(ii) The marking may consist of a removable device meeting the above identification requirements.

[FR Doc. 78-11698 Filed 4-27-78; 8:45 am]

[1]DOT form F 5800.1 is filed as part of the original document and available from the Office of Hazardous Materials Operations, Materials Transportation Bureau, Department of Transportation, Washington, D.C. 20590.

Federal register

FRIDAY, APRIL 28, 1978
PART V

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

■

Horse Protection

[3410-34]

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[9 CFR Part 11]

ANIMAL WELFARE

Horse Protection Regulations

Proposed Regulations under the Horse Protection Act.

AGENCY: Animal and Plant Health Inspection Service (USDA).

ACTION: Proposed rule.

SUMMARY: This document proposes new and revised regulations under the Horse Protection Act to prevent the showing, exhibiting, selling or auctioning of sore horses and certain transportation of sore horses in connection therewith at horse shows, horse exhibition, horse sales, and horse auctions as required or authorized by the Horse Protection Act Amendments of 1976, enacted on July 13, 1976, and certain other purposes.

DATE: Comments on or before May 30, 1978.

ADDRESS: Comments to Deputy Administrator, USDA, APHIS, VS, Room 703, Federal Building, 6505 Belcrest Road, Hyattsville, Md. 20782. Comments available for inspection at the above address during regular hours of business (8 a.m. to 4:30 p.m.) Monday through Friday (except holidays) in a manner convenient to the public business (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT:

Dr. Dale F. Schwindaman, Senior Staff Veterinarian, Animal Care Staff, Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, Room 703, Federal Building, 6505 Belcrest Road, Hyattsville, Md. 20782, 301-436-8271.

SUPPLEMENTARY INFORMATION: Notice is hereby given in accordance with the administrative provisions in 5 U.S.C. 553 that, pursuant to the provisions of the Horse Protection Act of 1970, as amended by the Horse Protection Act amendments of 1976 (Pub. L. 94-360), the Department of Agriculture is proposing to amend Part 11 of Title 9, Code of Federal Regulations to: (1) Amend and add new definitions to § 11.1 of the regulations (9 CFR 11.1) for "Act", "Administrator", "Deputy Administrator", "Veterinary Services", "Area Veterinarian in Charge", "Veterinary Services Show Veterinarian", "Veterinary Services representative", "State", "horse show", "horse exhibition", "Designated Qualified Person", "horse industry organization or association", "lubricant", and "sore"; (2) amend § 11.2 of the regulations (9 CFR 11.2) to identify the permitted equipment, devices, paraphernalia, substances, restrictions on competition, and information required for horses at horse shows, horse exhibitions, horse sales and horse auctions; (3) add a new § 11.3 to the regulations (9 CFR 11.3) to identify the criteria to be applied in enforcing the "Scar Rule" on horses shown, exhibited, sold or auctioned at any horse show, horse exhibition, horse sale and horse auction; (4) to amend § 11.4 of the regulations (9 CFR 11.4) to identify the requirements for the inspection and detection of horses; (5) amend § 11.5 of the regulations (9 CFR 11.5) to incorporate the provisions in present § 11.5 and § 11.23 of the regulations and to require show managers, sponsoring organizations, and exhibitors to allow Veterinary Services representatives, and Designated Qualified Persons specified access to the horse show, horse exhibition, horse sale, or horse auction premises and records; (6) add a new § 11.6 to the regulations (9 CFR 11.6) to require horse shows, horse exhibitions, horse sales and horse auctions to provide Veterinary Services with adequate space and facilities for the inspection of horses; (7) add a new § 11.7 to the regulations (9 CFR 11.7) concerning the certification of Designated Qualified Person (DQP) programs and licensing of DQP's by horse industry organizations or associations for the purpose of detecting and diagnosing soring or to otherwise inspect horses for the purpose of enforcing the Act and regulations; (8) amend § 11.20 of the regulations (9 CFR 11.20) to clarify the responsibilities and liabilities of management of any horse show, horse exhibition, horse sale, or horse auction; (9) amend the recordkeeping requirements in § 11.21 of the regulations (9 CFR 11.21); (10) amend § 11.22 of the regulations (9 CFR 11.22) to require the management of any horse show, horse exhibition, horse sale, or horse auction, and horse industry organizations and associations to provide the Department with or access to certain records and information; (11) delete § 11.23 of the regulations (9 CFR 11.23); (12) amend § 11.24 of the regulations (9 CFR 11.24) to require the management of horse sales, horse auctions, horse shows, and horse exhibitions to report all excused or disqualified horses and the reasons for such actions; (13) amend § 11.40 of the regulations (9 CFR 11.40) to require the shipper, transporter or receiver of horses being shipped, moved, transported, delivered or received where there is reason to believe such horses may be shown, exhibited, sold, or auctioned at any horse show, horse exhibition, horse sale, or horse auction to allow inspection and to assist in any such inspection of said horses and to furnish certain information concerning any such horses; and (14) amend § 11.41 of the regulations (9 CFR 11.41) to require horse industry organizations and associations to report certain information to the Department.

Section 4 of the Horse Protection Act as amended, (15 U.S.C. 1823), requires the Secretary to promulgate regulations establishing the qualification and certification requirements for "Designated Qualified Persons" who are appointed by the management of any horse show, horse exhibition, horse sale, or horse auction to detect and diagnose a horse which is sore or to otherwise inspect horses for the purpose of enforcing this Act. The intent of Congress and the purpose of this provision is to encourage horse industry self-regulatory activity and to allow the management of any horse show, horse exhibition, horse sale, or horse auction to have the benefit of certain limits upon their liability under the Act if they employ any such "Designated Qualified Person" to detect and diagnose soring and to otherwise inpect horses for the purpose of enforcing the Act.

The Horse Protection Act of 1970 did not specifically extend the Department's authority to conduct inspections of horses at horse sales and horse auctions. However, since horses were exhibited at many horse sales and auctions, the Department did conduct inspections at certain horse sales and auctions where horses were exhibited under the 1970 Act. The Horse Protection Act Amendments of 1976 specifically extends the Department's authority to inspect horses at all horse sales and horse auctions regardless of whether horses are exhibited during such sale or auction. It also significantly increased the responsibilities of the management of all horse shows, horse exhibitions, horse sales and horse auctions to prohibit the showing, exhibition, sale, or auction of any horse which is sore. The amendments also significantly expanded the definition of "sore". The 1976 amendments also authorize the Secretary to detain horses for further examination and testing for a period not to exceed 24 hours, and prohibit the failure or refusal to provide the Secretary with adequate facilities in which to conduct inspections or any other activity authorized under the Act.

The Horse Protection Act Amendments of 1976 significantly altered and expanded the Secretary's authority to prevent the showing, exhibiting, sale, or auction of sore horses at horse shows, horse exhibitions, horse sales, and horse auctions and the responsibilities of all persons participating therein. In order to promulgate regulations to conform to the Horse Protection Act Amendments of 1976, the

Department believes it advisable to revise certain definitions in the regulations and to add new definitions to clarify certain terminology used in the proposed regulations.

Therefore, it is proposed that the definitions in § 11.1 of the regulations (9 CFR 11.1) be revised as follows: A new definition of "Secretary" would be added to mean the Secretary of Agriculture or anyone who has heretofore or may hereafter be delegated the authority to act in his stead. The definition for "Administrator" would be amended to mean the Administrator of the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or any other official of the Animal and Plant Health Inspection Service, to whom authority has heretofore been delegated or to whom authority may hereafter be delegated, to act in his stead. The definition for "Veterinary Services" would be amended to mean the office of the Animal and Plant Health Inspection Service to which is assigned responsibility for the performance of functions under the Act. The definition for "Deputy Administrator" would be amended to mean the Deputy Administrator of the Animal and Plant Health Inspection Service for Veterinary Services, or any other official of Veterinary Services to whom authority has heretofore or to whom authority may hereafter be delegated to act in his stead. The definition of "State" would be amended in conformance with the Horse Protection Act Amendments of 1976 to mean any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands. The definition of "Act" would be amended to mean the Horse Protection Act of 1970 (Pub. L. 91-540) as amended by the Horse Protection Act Amendments of 1976 (Pub. L. 94-360), 15 U.S.C. 1821 et seq., and any legislation amendatory thereof. A new definition for "Veterinary Services Show Veterinarian" would be added to mean the Veterinary Services Doctor of Veterinarian Medicine responsible for the immediate supervision and conduct of the Department's activities under the Act at any horse show, horse exhibition, horse sale, or horse auction. A new definition for "Area Veterinarian in Charge" would be added to mean the Veterinary Services veterinarian who is assigned by the Deputy Administrator to supervise and perform official duties of Veterinary Services under the Act in a specified State or States that has been officially designated by Veterinary Services as an "Area." The definition of "Veterinary Services representative" would be amended to mean any employee of Veterinary Services or any officer or employee of any State agency who is authorized by the Deputy Administrator to perform inspections or other functions authorized by the Act, including the inspection of the records of any horse show, horse exhibition, horse sale or horse auction. The definition of "Sponsoring Organization" would be amended to mean any person under whose auspices a horse show, horse exhibition, horse sale, or horse auction is conducted. The definition of "Horse Show" would be amended to mean a public display of any horses, in competition, except events where speed is the prime factor, rodeo events, parades, or trail rides. The definition of "Horse Exhibition" would be amended to mean a public display of any horses, singly or in groups, but not in competition, except events where speed is the prime factor, rodeo events, parades, or trail rides. A new definition of "Horse Sale" or "Horse Auction" would be added to mean any event, public or private, at which horses are sold or auctioned, regardless of whether on not said horses are exhibited prior to or during the sale or auction. The definition of "boot" would be deleted and a new definition of "Action Device" would be added to mean any boot, collar, chain, roller, or other device which encircles or is placed upon the lower extremity of the leg of a horse. The definition of "inspection" would be amended to mean the examination of a horse and any records pertaining to a horse by use of whatever means are deemed appropriate and necessary to determine whether any horse and any records pertaining to any horse are in compliance with the Act and regulations. The inspection may include, but is not limited to, visual examination of the horse and its record; actual physical examination including touching, rubbing, palpating, and observation of vital signs, and the use of any diagnostic device or instrument; and the removal of any shoe, pad, action device, or any other equipment, substance or paraphernalia from the horse which deemed necessary by the person conducting such inspection for purposes of determining compliance with the Act and regulations. The definition of "Show Manger" would be amended to mean the person who has been delegated primary authority by a sponsoring organization for managing a horse show, horse exhibition, horse sale or horse acution. A definition of "Management" would be added to mean any person or persons who organizes, exercises control over or administers, or are responsible for organizing, directing or administering any horse show, horse exhibition, horse sale, or horse auction and specifically includes, but is not limited to, the sponsoring organization and show manager. The definition of "exhibitor" would be amended to mean (1) any person who enters any horse, or who allows his horse to be entered, or who directs or allows any horse in his custody or under his direction, control, or supervision to be entered in any horse show or horse exhibition; (2) any person who shows or exhibits any horse, or who allows his horse to be shown or exhibited, or who directs or allows any horse in his custody or under his direction, control, or supervision to be shown or exhibited in any horse show or horse exhibition; (3) any person who enters or presents any horse for sale or auction, or allows his horse to be entered or presented for sale or auction, or who allows any horse in his custody or under his direction, control, or supervision to be entered or presented for sale or acution at any horse sale or horse acution; or (4) any person who sells or auctions any horse, or who allows his horse to be sold or auctioned, or who directs or allows any horse in his custody or under his direction, control, or supervision to be sold or acutioned. A new definition of "Designated Qualified Person" would be added to mean a person meeting the requirements specified in § 11.7(a) of the regulations that has been appointed and delegated authority by the management of any horse show, horse exhibition, horse sale or horse auction under Section 4 of the Act to inspect horses and who is qualified to detect and diagnose sore horses and otherwise inspect horses for compliance with the Act.

A new definition of "horse industry organization or association" would be added to mean an organized group of people engaged in any way with the horse breeds by promoting, registering, showing, exhibiting, selling or auctioning of horses. A new definition for "Lubricant" would be added to mean mineral oil, glycerine, or petrolatum, or a mixture exclusively thereof, that is applied to the limbs of a horse solely for protection and lubricating purposes while the horse is being shown or exhibited at a horse show, horse exhibition, horse sale or horse auction. The definition of "Commerce" would be deleted because the Horse Protection Act Amendments of 1976 are applicable to all horse shows, horse exhibitions, horse sales or horse auctions whether or not any horse was moved in commerce to such show, exhibition, sale or auction. The term "sored horse" would be deleted, and the term "sore" would be included in the definition in its place. The definition of the term "sore" would be the same as the definition of that term in Section 2 of the Horse Protection Act Amendments of 1976.

Because most of the definitions in the regulations have been revised or deleted and new ones added in light of the Horse Protection Act Amendments of 1976, all the regulations are being set forth for republication in a logical order.

The Department has devoted considerable time and effort during the past 4 years to working cooperatively with the horse industry and humane organizations in an effort to determine whether certain exhibiting practices and various training methods and devices used on horses have an abusive or other soring related adverse effect on the legs of such horses. A total of 4 test clinics have been conducted to study the diverse methods and practices used in training horses and to evaluate the effect of various "action devices" when they are used daily on a horse's leg under actual show and training conditions. In addition to test clinics, approximately 20 meetings have been held with various horse industry organizations, at their request, to discuss the present regulations and to provide them with the opportunity to relate their concerns about the possible effects of the 1976 Amendments to the Horse Protection Act on the horse industry. On September 21, 1976, the Department published in the FEDERAL REGISTER (41 FR 41125) a notice of a public meeting to be held to obtain views, comments, arguments, and other input from the public in order to propose reasonable and effective regulations relating to Designated Qualified Persons, Recordkeeping and Reporting Requirements, Detention and Seizure, and Action Device and Equipment changes. This meeting was held October 14, 1976, in College Park, Md., and was attended by representatives of humane organizations, horse breed and horse registry organizations, horse training organizations, horse show organizations, horse exhibitors, and interested members of the general public.

Comments voiced at the public meeting, as well as written comments received later as a result of the meeting, indicated considerable apprehension within the horse show industry relative to the possible promulgation of proposed regulations that could adversely effect, economically and operationally, their ability to conduct a successful horse show. The main concerns voiced were that burdensome reporting and recordkeeping requirements not be imposed and that inspection facilities and other inspection related costs not be made prohibitive. The representatives from the horse training organizations and certain horse exhibitors expressed concern about the prohibitions placed on trainers and exhibitors under the present regulations and requested that the proposed regulations be made more flexible by allowing the use of additional "action" equipment and by adjusting the "heel-toe" measurement.

Throughout the present regulations, the term "sored" is used wherever reference is made to soring as that term was used in the Horse Protection Act of 1970. The Horse Protection Act Amendments of 1976 changed the term "sored" to "sore" as well as amending the definition of that term. Therefore, the term "sore" will be used in lieu of the term "sored" in all of the proposed regulations. Section 11.2 of the present regulations specifically identifies the prohibitions placed upon the exhibitors who show or exhibit any horse at any horse show or horse exhibition. In summary, the present regulations prohibit: (1) the showing or exhibiting, in any horse show or horse exhibition, or entering for the purpose of showing or exhibiting, any horse which is sore; (2) the use of any chain, boot or other method or device on a horse at any horse show or horse exhibition if such chain, boot or other method or device causes the horse to be sore; (3) the use of all non-boot devices on a horse for the purposes of affecting said horse's gait, except single link chains weighing 10 ounces or less each including the weight of the fastener, and lignum vitae or aluminum rollers weighing less than 14 ounces each including the weight of the fastener; and, (4) the use of all substances on the limbs of a horse, above the hoof and below the fetlock, except glycerine, petrolatum or mineral oil, or mixtures thereof.

Proposed § 11.2 of the regulations would delete paragraph (a) of the present regulations because the language of the 1976 Amendments to the Horse Protection Act specifically prohibits the showing, exhibiting, or entering for the purpose of showing or exhibiting at any horse show or horse exhibition, or selling or auctioning or offering for sale or auction at any horse sale or auction any horse that is sore. Consequently, the Department feels it would be redundant to repeat such prohibitions in the regulations. The proposed § 11.2 of the regulations would add the words "roller, collar, nor any other method, device or substance" for the purpose of more specifically identifying the devices, methods or substances that are prohibited if such devices, methods or substances cause a horse to be sore. In addition, throughout § 11.2, the words "horse sale or horse auction" would be inserted in addition to "horse show or horse exhibition" in order to bring the regulations into compliance with the provisions in the 1976 Amendments to the Horse Protection Act that apply to horse sales and horse auctions.

The Department proposes to allow the use of stainless steel rollers on the legs of horses in addition to aluminum and lignum vitae rollers if such rollers weigh no more than 14 ounces each including the weight of the fastener and such rollers are of uniform size, weight and configuration. The Department proposes this change because evidence gathered at three test clinics, where stainless steel rollers and other action devices were used on the legs of horses under actual training conditions, showed that properly used stainless steel rollers as well as aluminum and lignum vitae rollers do not harm a horse if they are of uniform size, weight and configuration. The evidence and information gained at the aforementioned clinics also provides the basis for the Department's proposal to: (1) Limit the weight of chains used on 2 year old horses to 8 ounces each including the weight of the fastener; (2) limit the weight of chains used on the legs of 3 year old horses to 10 ounces each, including the weight of the fastener; (3) limit the weight of chains used on horses 4 years old and older to 12 ounces each including the weight of the fastener; (4) require all links in chains used on a horse's legs to be of uniform size, weight and configuration; (5) prohibit the use of twisted link chains and chains with drop links on the legs of horses; (6) prohibit the use of more than one chain, roller, boot or other action device on any one limb of a horse; (7) require that all chains and rollers be smooth and free of protrusions, projections, rust, corrosion, or rough or sharp edges; (8) requre that all boots, collars, and any other devices be free of protrusions, swellings, or rigid, rough or sharp edges, seams, or other abrasive or abusive surfaces that may contact a horse's leg; (9) prohibit chains, rollers, beads, bangles, collar devices, boots, or any other action device from being placed on a horse's leg in a manner that will allow such device to strike the coronet band of a horse's foot while such horse is in motion or at rest; (10) prohibit the use of "rocker bars" on the bottom surface of horse shoes if the posterior part of such rocker bar extends more than 1½ inch behind the point of the toe; and (11) require that metal hoof bands, used to strengthen pads and horseshoes, be placed no closer than ½ inch below the coronet band and that any such metal hoof band be fastened with a permament fastener.

The aforementioned clinics provided evidence that considerable care must be exercised in order not to damaged the hair and skin on the legs of 2 year old horses and certain 3 year old horses while such horses are being exercised and trained using various types of equipment and action devices. The hair and skin of an average 2 year old horse is considerably more tender than an older horse due to its young age and the fact that it has not experienced the extensive physical conditioning that older horses have received. Evidence obtained at the clinics also revealed that 12 ounce chains, including the weight of the fastener, do not harm most horses 4 years old or older if they are used properly and the

horse is properly conditioned. Three year old horses are better conditioned than a 2 year old horse and their skin has naturally become thicker and more resistant to injury, however, their skin is still not as resistant to injury as the skin of a more mature animal. Consequently, the Department proposes to limit the weight of chains used on 2 year old horses to 8 ounces each, including the weight of the fastener; 10 ounces each, including the weight of the fastener, on 3 year old horses; and to 12 ounces, including the weight of the fastener, on 4 year old and older horses.

The present regulations require that all chains have links that are of uniform size. The proposed regulations would add the requirement that all links have the same configuration and would place an absolute prohibition against the use of chains with double links, twisted links, and chains with "drop" links. This proposal is made because repeated tests using "odd" link, double link, and twisted link chains showed that such chains actually "grab" the hair on a horses leg and either break the hair or pull it out by the roots, depriving the horse of protection from pain and trauma. The tests also showed that chains with "drop links" are particularly harmful because the hanging drop link repeately strikes the tender coronet band of the foot when the horse is in motion, causing the horse to suffer pain. The test clinics also provided evidence that the use of more than one action device on the leg of a horse resulted in traumatic damage to the hair, skin, and coronet band, particularly when the horse is in motion. When more than one action device is used, the hair, skin, and coronet band is subjected to two different types of friction and intermittent contact between the devices and the horse's leg, causing pain, distress, inflammation, or lameness when a horse is walking, trotting or otherwise moving.

The present regulations prohibit the use of any action device, boot, collar, roller, or any other device that has seams, protrusions, projections, rough, rigid or sharp edges, swellings, rust, corrosion, or any other abrasive or abusive surface that may contact a horses leg when such horse is at rest or in motion. The proposed regulations would retain these proghibitions.

APHIS officials have expressed concern in the past to the horse industry relative to the excessive amount of stress placed upon the tendons of yearling horses when lead weights are attached to horseshoes or pads and when the angle of the foot is substantially altered by building up the foot and the heel with thick leather pads. This excessive tendon stress has repeately been demonstrated and documented by APHIS veterinarians through the use of infrared thermography. The infrared heat detection instrument, known as thermovision, used by APHIS veterinarians to aid in the detection of soring, has been used on yearling horses shown at halter as well as mature horses shown under saddle. the majority of show yearlings with built-up and weighted feet that were viewed with thermovision showed evidence of considerable inflammation in the deep and superficial flexor tendons. Yearlings with natural and unshod feet do not show such inflammation. Consequently, the Department proposes to limit the artificial elevation of a yearling horse's foot by prohibiting the use of pads between the foot and the shoe which exceed a thickness of 1 inch at the heel of the foot. The Department further proposes to restrict the amount of weight on a yearling horse's foot by limiting the weight of the horseshoe to 16 ounces and prohibiting the use of supplementary weights attached to the shoe or foot. These proposals are made to protect yearling horses from permanent tendon and ligament damage which causes such horses to suffer pain when walking, trotting or otherwise moving. The care given to the tendons and ligaments of a yearling horse will ultimately determine whether or not such horse is "leg sound" at maturity.

The present regulations require that the toe measurement of a horse's hoof be at least 1 inch longer than the heel measurement, when such toe measurement is made from the coronet band at the center of the front pastern along the hoof wall to the ground. The heel is measured from the coronet band, at the most lateral part of the rear pastern, at a 90 degree angle to the ground, at the rear of the shoe. This regulation has resulted in numerous complaints from the horse industry, particularly in the past 2 years, because the industry claims that the "natural foot" (unshod) of many horses does not measure one inch longer at the toe than at the heel. Due to these complaints, APHIS officials made a conscientious effort to determine the validity of the industry claim. Many unshod horses, weanlings, yearlings and mature horses, were observed and examined to evaluate the normal "heel-toe" relationship.

This study provided conclusive evidence that the "normal" was greatly influenced by the hereditary characteristics evidenced by different blood lines. Certain blood lines have a long pastern with a pronounced angle of the foot resulting in a long toe. Other blood lines have much shorter pasterns with a much less pronounced foot angle, resulting in a much shorter toe length. In fact, many horses, while standing on a natural unshod foot, do not have a toe length that exceeds the height of the heel by 1 inch or more. Therefore, the Department proposes to reduce the toe length by ½ inch and require that the length of the toe must exceed the height of the heel by ½ inch, excluding normal caulks (not exceeding ¾ inch in length) at the rear of the shoe. Caulks are put on horseshoes to provide traction much like the cleats on a football shoe. Knowledgeable horsemen and expert professional farriers have advised the Department that a normal caulk should not exceed ¾ inch. in length. Consequently, the Department proposes to limit the length of a horseshoe caulk to ¾ inches. That portion of a caulk at the rear of a horseshoe in excess of ¾ of an inch shall be added to the height of the heel in determining the heel-toe ratio.

Due to the present "heel-toe" requirement that the toe be 1 inch longer than the height of the heel, many horsemen and farriers have attempted to circumvent this regulation by adding artificial extensions to the toe. This has been accomplished by unorthodox shoeing, building a false hoof wall with acrylics and other compounds, etc., with the express purpose of obtaining a longer toe length. Consequently, since the Department proposes to reduce the toe length by ½ inch thereby solving the problem that precipitated the artifical toe extension, the Department further proposes to prohibit the artificial extension of toe lengths unless such extension is therapeutically necessary to repair a broken hoof. In carrying out inspection procedures on thousands of horses, APHIS veterinarians have occasionally observed horses that are shod in such an unorthodox manner that, as a consequence, the horse has difficulty keeping its balance when standing or walking on a hard surface. The most common unorthodox shoeing practice is the use of unconventional "rocker bars" on the horseshoes. "Rocker bars" (metal bars extending from one side of the horseshoe to the other and extending downward) serve a useful purpose when placed near the toe, in that they cause a horse to "break-over" (lift the feet more quickly) faster. However, the bars observed by APHIS veterinarians that cause the Department concern are those bars that are located in the center (midway between toe and heel) of the horseshoe. The Department knows of no legitimate or useful purpose for a rocker bar located in the center of a horseshoe. Conversely, the center located rocker bar can result in injury to a horse because it prohibits the animal from firmly planting its feet. When standing on a hard surface, a horse wearing a horseshoe with a center rocker will "teeter" back and forth, trying to keep its balance. This imbalance can result both in possible

tendon damage due to the placing of abnormal tension on ligaments and tendons and in bone damage due to falls precipitated by the sheer difficulty in standing or moving. Consequently, in an effort to preclude possible injury to horses, the Department proposes to prohibit the use of "rocker bars" if the most posterior part of such bars extend more than 1½ inches posterior from the point of the toe.

It is quite common, particularly within the Tennessee Walking Horse Industry, for pads and shoes to be secured by means of a metal band across the front of the hoof. The metal band is fastened to the shoe and pads on one side, brought across the front of the hoof, and fastened to the shoe and pads on the other side with a nut and bolt or a winged nut fastener. The Department has no objection to such bands if they are attached in such a manner that the metal band rests at least ½ inch below the coronet band and if they are not tightened sufficiently to compress the hoof and thereby exert painful pressure on the hoof wall. If the band is placed too close to the coronet band, it will not only cause pain, because the coronet band is made of soft tissue, it can also possibly seriously impair the blood supply to the hoof. The coronet band is very vascular and is the primary blood supply source for the hoof. For these reasons, the Department proposes to prohibit the use of metal hoof bands unless they are placed ½ inch or more below the coronet band. The Department further proposes to prohibit the use of non-permanent fasterners on hoof bands. This prohibition will prevent unscrupulous horsemen from deliberately tightening hoof bands immediately prior to competition for the purpose of creating sufficient pain to cause the horse to quickly pick up its feet, thereby enhancing or improving the performance of such a horse.

The Horse Protection Act Amendments of 1976 specifically prohibit any practice involving the limb of a horse that results in the horse suffering, or can reasonably be expected to result in the horse suffering pain, distress, inflammation, or lameness when walking, trotting, or otherwise moving. Consequently, the Department proposes to prohibit the shoeing or trimming of a horse's hoof in a manner that will cause such horse to suffer pain, distress, or inflammation when walking, trotting, or otherwise moving. Department officials believe this prohibition is necessary to protect horses from unscrupulous horsemen and farriers who engage in practices such as, but not limited to, placing a pressure wedge between the shoe pad and the frog; deliberately trimming the hoof without properly trimming the sole, thereby causing the sole to act as a pressure plate; placing a tack or screw in the shoe pad in such a manner that it will slightly penetrate the frog of the horse's foot; and, deliberately "quicking" the hoof of a horse with the horseshoe nails.

The Department recognizes and accepts the fact that lead or other weights must sometimes be added to horseshoes for the purpose of "balancing" a horse. Some horses will step or reach higher with one foot than with the other. The proper use of weights corrects this problem much like the proper use of lead or other weights will balance an automobile tire. Such weights are traditionally place under the foot by attaching them to the horseshoe or to the pad between the shoe and the hoof. However, certain horsemen have added weights considerably in excess of "balancing" weights for the purpose of forcing a horse to alter its normal gait. This practice can possibly cause serious damage to the horse by putting too much stress on the horse's tendons. In many such cases, sufficient weights cannot be added under the hoof because there is not enough space, therefore, weights are added on the side, toe, and heel areas of the hoof and shoe. For the purpose of protecting horses from pain, distress, and possible damage to the tendons, the Department proposes to limit the use of excessive weights by prohibiting the attachment of weights to the outside of the hoof pad wall or on the outside surface of the horseshoe.

The present regulations prohibit the use of any substance except glycerine, petrolatum, and mineral oil, or mixture thereof, on the legs of a horse above the hoof and below the fetlock while such horse is being shown or exhibited at any horse show or horse exhibition. At the time the present regulations were written, foreign substances, such as corrosive chemicals, dyes, grease etc., were used primarily on the pastern area of a horse's leg. Consequently, the prohibitions related to substances were limited to the area below the fetlock joint. However, this is no longer the case. APHIS inspectors have repeatedly detected the presence of substances or evidence of the use of substances on all parts of the leg while conducting thousands of physical and thermographic examination on horses at numerous horse shows, horse exhibitions, horse sales and horse auctions. The "evidence of the use of substances" referred to in the preceding sentence consists of evidence detected by the Department's infrared thermovision instrument. This instrument is capable of detecting and measuring the amount of heat (infrared emissions) given off by the living tissue in a horse's leg. When corrosive or other types of chemical preparations that are capable of causing tissue irritation are used on a horse's leg, the thermovision instrument will detect and record on film the amount of abnormal heat produced by the inflammation resulting from the use of the chemical. Also, certain instances have been documented where substances capable of blocking infrared (heat) emissions have been used on a horse's leg in an effort to "beat" the thermovision instrument. Because of evidence observed and documented by APHIS veterinarians, the Department proposes to prohibit the use of all substances, except glycerine, petrolatum, mineral oil, or mixtures thereof, on any part of the forelimb or hindlimb of a horse while such horse is being shown, exhibited, sold or auctioned, or offered or presented for show, exhibition, sale or auction at any horse show, horse exhibition, horse sale or horse auction.

Department officials have become increasingly alarmed about the degree and high incidence of tendonitis in 2-year-old horses reported by APHIS veterinarians conducting physical and thermograhic inspections of horses at horse shows, horse exhibitions, horse sales and horse auctions. Knowledgeable people within the horse industry, as well as APHIS veterinarians and private veterinary practitioners, attribute this high incidence of tendonitis to the use of exessive amounts of weight in the shoe and pad (as described previously concerning lead or other type weights), and to the length of time that young horses are worked during a horse show, horse exhibition, horse sale or horse auction. In fact, APHIS veterinarians have repeatedly observed 2-year-olds exhibiting the signs and symptoms of complete exhaustion after being worked in show classes that lasted 30–45 minutes. In addition, virtually all of these horses exhibited evidence of moderate to severe tendonitis when scanned with the infrared thermovision instrument. Consequently, the Department proposes to limit the length of time a 2-year-old horse can be ridden in a workout, at any horse show, horse exhibition, horse sale or horse auction, to 10 minutes per workout. Further, the Department proposes to require a minimum 5-minute rest period between workouts and to limit the number of workouts to two per show class.

The Horse Protection Act Amendments of 1976 provides authority for the Secretary to promulgate regulations to require any person who owns, trains, shows, exhibits or sells, or has custody of or control over any horse that has been shown, exhibited, sold or auctioned, or offered for the purpose of being shown, exhibited, sold or auctioned at any horse show, horse exhibition, horse sale or horse auction, to provide accurate information relating to any such horse upon the request of a Department representative.

For the purpose of enforcing the provision of the Act, the Department proposes to amend the regulations to require all persons having custody of, direction, or control over the showing, exhibiting, selling or auctioning of any horse or entering any horse for the purpose of selling, exhibiting, sale or auction at any horse show, horse exhibition, horse sale or horse auction, to provide any Veterinary Services representative with accurate information concerning said horse. Such information would include, but not be limited to, details such as the registered name; age; sex; markings; legal ownership of a horse; name and address of the training or stabling facilities; name and address of the owner, trainer, exhibitor, or other legal entity bearing responsibility for the horse; class or sale in which the horse is entered or offered for sale; exhibitor identification number; and any other information reasonably related to the identification, ownership, control, direction, or supervision of any horse. All of the information proposed to be required is necessary not only for inspection enforcement but is vital in order to prosecute the appropriate alleged violators and thereby effectuate the purposes of the Act.

When the Horse Protection regulations were revised in August 1976, the entire Section 11.3 was deleted because the restrictions contained in Section 11.3 were no longer applicable. The Department now proposes to add a new Section 11.3 to identify and clarify the criteria proposd to be applied in enforcing the "scar rule" for horses shown, exhibited, sold or auctioned at any horse show, horse exhibition, horse sale or horse auction. The "scar rule" refers to the bilateral scarring and/or loss of hair on a horse's leg which can reasonably be identified with the practice of "soring." The word "reasonably" is used because in most instances, in order to be effective, "soring" must be accomplished in an approximately equal degree on approximately the same area of each leg. Consequently, if loss of hair and granulation tissue is visually evident in the same approximate degree and in the same approximate area on each leg, it can reasonably be assured that such horse has been and is sore from the use of chemicals and/or abusive action devices.

The organized Tennessee Walking Horse industry has utilized a "scar rule" in its internal self-policing program since the beginning of the 1974 show season. This "scar rule" was cooperatively developed by representatives of the horse industry and the Department and was applied to 2 year old horse's in 1974; to 2 and 3 year old horse's in 1975; to 2, 3, and 4 year old horse's in 1976; and to 2, 3, 4, and 5 year old horse's in 1977. As a result of this program, most Tennessee Walking Horses 5 years old and younger do not bear the scars, granulomas, and callouses indicative of soring that are often found on older horses. Consequently, the Department proposes to adopt definitive criteria for application of a "scar rule". Since scarring, which is indicative of soring, can result in the prosecution of the owner, trainer, exhibitor, or other legal entity having supervision, direction, or responsibility for the care of a horse, and because such scarring can result in a horse being disqualified from competition in a horse show or horse exhibition and from being sold at a horse sale or horse auction, the Department believes it will benefit all concerned parties by adopting and enforcing a national uniform criteria for applying the "scar rule". The proposed "scar rule" allows for normal changes in the skin that are due to friction. These changes would allow thickening of the epithelial layer of the skin in the pastern area (much like a callous on a workman's hands) and the moderate loss of hair in the pastern area caused by the friction generated by an action device. The "scar rule" would not allow bilateral granulomas, other bilateral pathological evidence of inflammation, or excessive hair loss on the anterior and anterior-lateral surface of the fore pasterns, and would prohibit all proliferating granulation tissue or other evidence of tissue inflammation. The proposed "scar rule" is not intended to, and will not, penalize a horse that bears a scar or scars resulting from accidental injury. The safeguard against such an interpretation lies in the word "bilateral." The chances are extremely remote that any horse would ever injure both forelegs in an identical manner with resulting identical scars in the anterior or posterior pastern area of each foreleg.

Section 6 of the 1976 Act provides the Secretary with the authority to detain (for a period not to exceed 24 hours) for further examination, testing, or taking of evidence any horse which is sore or which the Secretary has probable cause to believe is sore at any horse show, horse exhibition, horse sale or horse auction. The Department believes this authority for detention of horses is vital to its enforcement program because highly sophisticated soring techniques and devious techniques for "masking" soring have evolved since the original 1970 Act became law. Evidence of soring is no longer highly visible to the naked eye and detection of soring has not only become more difficult, but it also requires a more detailed physical examination and often requires the use of sophisticated scientific instruments, especially after a sore horse has been worked, as in a horse show or horse exhibition, because certain soring symptoms will disappear after a horse is "warmed-up". However, the cardinal symptoms of soring, especially, stiffness, reluctance to move, pain, and distress, will reappear after the horse has cooled off and is allowed to stand in the stall. Therefore, in order to effetively enforce the Act, the Department proposes to adopt regulations, pursuant to the Act, concerning the detention of horses suspected of being sore for a period not to exceed 24 hours. Under the proposed regulations, detained horses would be under the constant supervision of a Veterinary Services representative or would be secured with an official Department seal or seals in a horse stall or other facility to which access is limited. Under the proposal, detained horses would receive normal care such as feeding, watering, veterinary care, etc., under the supervision of a Veterinary Services representative. Horses detained under an official Department seal could not be removed and the seal or seals could not be broken by anyone other than a Veterinary Services representative, unless such horse is in need of such immediate veterinary attention that its life may be in peril or its life is endangered by fire, flood, windstorm, or other dire circumstances beyond human control and a Veterinary Services employee is not immediately available. The Department believes the proposed regulations are reasonable in that provisions are made for emergency situations that may occur while a horse is detained, while at the same time providing the security necessary to support the presumptin that nothing else has been done to the horse while under such detention. Such precautions are necessary to preserve the integrity of the Federal enforcement program. In addition, the proposal contains provisions for the owner, trainer, exhibitor, or other person having custody of any horse allegedly found to be in violation of the Act, to request that said horse be detained and re-examined within a 24 hour period, provided such request is made to the Veterinary Services Veterinarian in Charge imediately after the horse has been examined by Veterinary Services personnel and prior to the animal being removed from the Veterinary Services inspection area. If the Veterinary Services Veterinarian in Charge determines that sufficient cause for re-examination exists and Veterinary Services personnel are available to conduct said re-examination, the horse must be placed in the supervisory custody of Veterinary Services personnel until such re-examination has been completed. This proposal will provide members of the horse industry with the same reinspection prerogative that Veterinary Services representatives are allowed under the Act.

The 1976 Amendments authorize the Secretary to promulgate regulations relative to the inspection of any horse show, horse exhibition, horse sale, or horse auction, and any horse shown, exhibited sold or auctioned or entered for show, exhibition, sale, or auction at any horse show, horse exhibition, horse sale or horse auction. The present regulations address certain Department authorities as related to the inspection of horses at shows and exhibitions only and provide show management with limited opportunities or alternatives to take actions for assuring compliance with the Act. The present regulations provide authority for the show management to delegate, to a licensed veterinarian only, the authority for obtaining compliance with the Act. Further, the present regulations are not specific concerning (1) the places, times, or occasions that horses are subject to inspection by a Veterinary Services representative or an authorized representative of show management; (2) the method or methods that may be utilized by Veterinary Services representatives in selecting specific horses for examination; (3) and, the requirements expected of show management, owners, trainers, exhibitors, or any other person having custody, supervision, or control over any horse as related to the required accessibility of any horse shown, exhibited, sold or auctioned, or entered for the purpose of being shown, exhibited, sold or auctioned at any horse show, horse exhibition, horse sale or horse auction.

The Department proposes to require that any horse be made available for inspection upon the request of any Veterinary Services representative and any designated qualified person appointed by management. The proposal would allow the inspection of any horse stabled or loaded on trailers and any horse being exercised or prepared for show, exhibition, sale or auction, or otherwise on the grounds of, or at any horse show, horse exhibition, horse sale or auction, either before or after such horse has been shown, exhibited, sold, or auctioned. The Department believes such authority is necessary because soring practices are committed while horses are stabled or being prepared for show, exhibition, sale, or auction, and because sored horses are sometimes loaded on trailers and removed from the official show, exhibition, sale, or auction grounds when persons owning or having custody, control, or supervision over such horses become aware that Veterinary Services representatives are present at a horse show, horse exhibition, horse sale, or horse auction. The proposal would also allow show management to designate a Designated Qualified Person (DQP) person other than a Doctor of Veterinary Medicine to inspect horses for compliance with the Act and thereby delegate the responsibility placed upon show management by the Act for identifying any sore horses at any horse show, horse exhibition, horse sale or horse auction. The proposal would also make it mandatory for management or a DQP appointed by management to physically inspect every first place horse in every gaited class of any horse show. Other horses selected for inspection by a Veterinary Services or show management representative may be selected by any method, whether it be by random selection, preselection, or otherwise. Further, the proposal would prohibit any horse owner, trainer, exhibitor, or other person having custody of, supervision, or control over any horse selected for inspection by a Veterinary Services representative, management, or a DQP appointed by management from removing such horse from the horse show, exhibition, sale or auction grounds until such horse has been examined and released by a Veterinary Services representative, management, or a DQP appointed by management, as the case may be. The Department believes such regulations are necessary for effective enforcement of the Act and for show management to meet their responsibilities under section 5 of the Act. The proposed regulations relating to "Access to Premises and Records" are substantially the same as the present regulations. This Section requires that owners, exhibitors, trainers, or other persons having custody of a horse at any horse show, horse exhibition, horse sale, or horse auction, and also the management of any horse show, horse exhibition, horse sale, or horse auction, provide unlimited access to Veterinary Services representatives and DQP's appointed by management without fee, charge, assessment, or other compensation, to any and all areas (including adjacent areas) of a horse show, horse exhibition, horse sale, or horse auction, for the purposes of the inspection of horses and the examination of horse show, horse exhibition, horse sale, or horse auction records, as provided by the Act. Further, the proposal would require show management to provide Veterinary Services representatives and DQP's appointed by management with adequate, safe, and accessible areas for conducting visual and physical examinations of horses. Adequate and effective enforcement of the Act requires that Veterinary Services representatives and DQP's appointed by management have unlimited access to all premises, grounds, and facilities of any horse show, horse exhibition, horse sale or horse auction. Also, adequate and effective inspection of horses requires a safe, adequate, and accessible space in which inspection duties may be performed without endangering other persons, property, or the horses being inspected.

The Department feels that unnecessarily burdensome requirements should not be placed upon the horse industry. However, the Department believes that Veterinary Services representatives and DQP's appointed by management must be provided with minimal space, facilities, and safety standards if said representatives are to be expected to perform their inspection duties in a satisfactory manner.

Crowd control is a vital necessity because of the presence of too many people in the inspection area creates a safety hazard and also impedes the ability of Veterinary Services representatives to perform required inspection duties. A power source is also vital because Veterinary Services representatives must have adequate lighting in non-daylight hours in order to observe the movement of horses and to conduct visual and physical inspections of horses. Protection from the elements of nature is also important since adverse weather conditions would obviously interfere with proper and adequate inspection. Further, protection from the "crush of the crowd" and the elements and an adequate power supply are an absolute necessity when the Department's infrared thermovision instrument is being utilized.

Therefore, the Department proposes to require that management of all horse shows, horse exhibitions, horse sales and horse auctions provide or make prior plans for providing, if necessary, an adequate, safe, and accessible space, and facilities for Veterinary Services representatives to perform their inspection duties whether or not management knows or has reason to believe that the Department will inspect horses at such show, horse exhibition, horse sale or horse auction. This requirement is necessary so that Veterinary Services will not have to give advance notice to anyone concerning their intention to inspect any horse show, horse exhibition, horse sale, or horse auction in order to be assured that adequate and safe facilities for inspecting horses will be available when they arrive. If the management has already reserved an adequate inspection area or has made prior plans and has a predesignated inspection area that can be made readily available, Veterinary Services will be able to make surprise inspections and thereby more effectively and efficiently utilize available manpower and funds to obtain maximum compliance with the Act. Surprise inspections are vital to effective enforcement, as past experience has proven that known violators will avoid shows where the word has gotten out that Veterinary Services will inspect the show. In the past, it has been necessary for Veteri-

nary Services to give management prior notice in order to assure that an adequate electrical power source be available for using the thermovision instrument. The proposal would require that such space and facilities shall (1) Provide protection from the elements of nature; (2) Provide means for ensuring crowd control; (3) Provide access to an electrical power source producing a minimum of 110 volts of power; and (4) Provide reasonable protection from injury for Veterinary Services representatives. These proposed requirements are the bare minimal standards the Department feels are necessary for effective enforcement of the Act and for the protection of Veterinary Services employees and spectators, as well as for the horses being inspected or waiting to be inspected.

Section 4 of the Act authorizes the Secretary to prescribe by regulations the requirements for persons designated by show management to detect and diagnose soring for purposes of enforcing the Act. Whereas the present regulations limit show management to appointing a licensed and accredited Doctor of Veterinary Medicine to inspect horses for compliance with the Act, the proposed regulations would also permit the designation of nonveterinarians who are licensed as "Designated Qualified Persons" and would establish training and performance standards for such persons. Also, under the proposal, Doctors of Veterinary Medicine appointed by management must meet the following standards: (1) Be accredited by the Department; (2) be licensed to practice veterinary medicine; and (3) be experienced and knowledgeable about equine lameness problems as related to soring and soring practices. The Department believes these minimum standards are necessary if the Department and show management are to be reasonably confident that any veterinarian, retained by management to inspect horses for compliance with the Act, has sufficient knowledge about horses and soring to adequately perform inspection duties. This requirement is not intended to cast any adverse reflections against the overall veterinary profession. The Department recognizes the fact that veterinary medical practitioners are primarily divided into two groups which are those primarily interested in small animal medicine and those primarily interested in large animal medicine, including many who specialize in equine medicine.

It was the intent of Congress, when the 1976 Act was passed, for the Department to develop minimum qualification standards for nonveterinarians who may be retained by show management for the purpose of inspecting horses for compliance with the Act. Though such persons must receive certain specialized training if the Act is to be uniformly enforced throughout the Nation, it is physically and economically impossible for the Department to furnish such training to every non-veterinary individual desiring to become a "Designated Qualified Person." Consequently, the Department proposes to certify any individual who qualifies for and participates in self-regulatory programs developed by the horse industry.

The proposal would require that all DQP candidates be very knowledgeable horsemen such as, but not limited to, farriers and horse trainers, because persons without such knowledge would require more extensive and intensive training than the Department proposes to impose on the horse industry organizations or associations that may wish to develop and maintain a DQP program. Further, such horse related knowledge is vital in order for a DQP candidate to understand the training materials utilized in a DQP training program and to be able to effectively carry out the duties and responsibilities expected of a DQP. In summary, the Department would certify designated qualified person programs developed and maintained by a horse industry organization or association if such organization or association meets the minimum standards designated by the Department. In order for any industry program to attain integrity and uniformity, it is vital that formal training be provided for the DQP candidates and that any such horse industry organization have the authority to maintain disciplinary control over any such program. Therefore, the Department proposes that any horse industry organization or association desiring to sponsor, operate, and administer a DQP program be required to provide formal classroom and practical training for DQP candidates and that such candidates be evaluated and certified as competent to enforce the Act before they are licensed as DQP's.

Under the proposal, the horse industry organization or association desiring to train and license DQP's under the Act would submit to the Department in writing the following information:

(1) The criteria to be used by the horse industry organization or association for selecting or accepting candidates for their DQP training program;

(2) The amount of horse-related knowledge and other minimum qualifications each DQP candidate must possess in order to be admitted to the training program; and,

(3) A copy of the formal training program, classroom and practical, that must be successfully completed by each DQP candidate before being licensed by the horse industry organization or association.

The proposal would further require that the subject matter in the formal DQP training program include a minimum of 2 hours class room instruction on the anatomy and physiology of the limbs of a horse; 2 hours classroom instruction on the Horse Protection Act, its regulations and their interpretation; 4 hours classroom instruction on the history of soring, the methods of soring, the physical examination procedures necessary to diagnose soring, the detection and diagnosis of soring, and other related subjects; and 1-hour classroom instruction on the DQP standards of conduct required by the Department. In addition, the proposal would require that the DQP training programs include at least 4 hours of practical training at seminars or clinics where each DQP candidate can apply the knowledge gained in the classroom and can actually demonstrate their abilities on live horses.

The Department believes the proposed 9 hours of classroom and 4 hours of practical instruction are the bare minimum necessary for adquately training a DQP candidate with prior knowledge about horses. The Department believes it is necessary to establish minimum DQP training standards in order for horse industry organizations or associations to clearly understand what is expected of them in developing and maintaining a viable and credible DQP program. Further, minimum standards are necessary for the Department to utilize as definitive criteria when evaluating a DQP program for adequacy prior to certifying the program. Without definitive criteria upon which to base an evaluation, decisions relating to certification would be purely arbitrary.

The proposal would also require that organizations and associations submit the names, background, experience, and academic qualifications of the instructors responsible for teaching the classroom subjects and conducting the training seminars and clinics. The one exception would be the 2-hour class on the Horse Protection Act, its regulations and their interpretation. Upon the written request of the organization or association conducting the DQP training program, the Department would furnish or recommend an instructor for the course on the Horse Protection Act. The Department believes that the courses on anatomy, physiology, soring, practical application of knowledge at clinics and seminars, and standards of conduct would be of little value unless the instructors teaching such courses were eminently qualified in the respective subjects. Consequently, the Department feels it is just as necessary to evaluate the quality of the instructors as it is to evaluate the quality of the subject matter prior to certifying a DQP program. Prior to and immediately after passage of the Horse Protection Act of 1970, it required little knowledge or

skill to recognize a sored horse. Soring was flagrant and obviously visible to the naked eye. However, the horse with bloody legs and open sores on the pasterns is a thing of the past. Soring today is devious and is seldom evident to the untrained or inexperienced observer. Consequently, the Department feels that any DQP candidate must be familiar with and reasonably knowledgeable about horses in order to be considered for any DQP training program. Further, since the practice of soring involves the hoof, the skin, and the connective tissue under the skin of the feet and legs, the veins and arteries of the feet and legs, and sometimes the muscles and bones in the feet and legs, the Department believes it is vitally necessary for a DQP candidate to have basic knowledge about the anatomy and physiology of the limbs in order to recognize, understand, properly document, and recall for purposes of evidence, if necessary, the effect of soring on living tissue as well as the lesions and symptoms relating to soring on any particular horse. Further, the Department believes every DQP candidate must also have a basic knowledge of the history of soring, the methods of soring, and the various inspection techniques and procedures necessary to detect and diagnose soring. Without such basic knowledge, the DQP candidate cannot be expected to understand the scope of the soring problem, the nefarious benefits attributed to soring, or the necessity of applying a uniform inspection procedure for the purpose of detecting and diagnosing soring. The Department feels that the proposed minimum standards for classroom instruction and practical training are vital to assure the integrity and adequacy of any DQP training program. Further, the Department believes that each DQP must be able to make independent and objective soring related decisions. Consequently, minimum standards of conduct are necessary in order to prevent any conflict of interest or other problem that could possibly result in undue pressure being exerted for the purpose of influencing the decision of a DQP.

In summary, the Department would certify designated qualified person programs developed and maintained by a horse industry organization or association if such organization or association meets the minimum standards designated by the Department. In order for any industry program to attain integrity and uniformity, it is vital that formal training be provided for the DQP candidate and that any such horse industry organization have the authority to maintain disciplinary control over any such program.

Therefore, the Department proposes that any horse industry organization or association desiring to sponsor, operate, and administer a DQP program be required to provide formal classroom and practical training for DQP candidates and that such candidates be evaluated and certified as competent to enforce the Act before they are licensed.

In order to assure that each DQP understands the requirements relating to standards of conduct, the Department believes it is necessary to include a classroom course on the DQP standards of conduct required by the Department in the formal DQP training program. The proposal would also require the organization or association requesting certification of their DQP program to submit a sample of the written examination each DQP must pass in order to successfully complete the DQP training program.

In addition, sample answers to the examination, the method of scoring such examination, and the proposed passing and failing standards for such examination must be submitted. Also, in order to obtain sufficient information upon which an objective decision can be made concerning the adequacy of any DQP training program, the Department also proposes to require the sponsoring organizations or associations to submit the criteria to be used by the organization or association in determining the qualifications and adequate performance abilities of individual DQP candidates who have completed a training course, prior to licensing such DQP candidates.

In addition, the Department proposes to also review the continuing education plans of the DQP program sponsoring organizations and associations and the methods such organizations or associations propose to use to ensure that DQP's apply uniform inspection procedures and uniformly interpret and enforce the Horse Protection Act and regulations. The Department desires this information for the purpose of fairly and objectively evaluating the adequacy and integrity of a DQP training program before determining whether or not any such program will be certified by the Department. The proposed regulations governing DQP training programs would also require that the Department be notified of any DQP training clinics and seminars at least 10 days before such clinics or seminars are scheduled to be conducted. The Department must know when and where such clinics or seminars are to be held in order to be able to make arrangements to have a Veterinary Services representative monitor them to determine if such clinics or seminars are providing adequate practical instruction and are providing ample opportunity for DQP candidates to demonstrate their classroom knowledge and horse related abilities.

The proposed regulations would require horse industry organizations or associations that have received Department certification of their DQP training program to issue a numbered identification card to each DQP licensed by such organization or association. Such card would bear the name, personal signature, and a picture of the DQP and the name and complete mailing address of the licensing organization or association. The Department believes it is vitally necessary for licensed DQP's to have proper identification credentials in order to prevent unqualified and unlicensed individuals from posing as qualified licensed DQP's and to protect management and exhibitors who are genuinely dedicated to complying with the Act and regulations.

Under the proposed regulations, Department certified organizations and associations would be required to submit to the Department a list of all DQP's that have completed the DQP training program and have been licensed under the Act and regulations. Such list would include the complete mailing address of each DQP. In addition, the proposal would require each Department certified organization or association to notify the Department of any additions or deletions of licensed DQP's from the original list of licensed DQP's that has been submitted to the Department, within 10 days of any such deletion or addition change.

The proposal would also prohibit the licensing of any DQP candidate if such candidate has been convicted of any violation of the Act and regulations or paid any fine or civil penalty in settlement of any proceeding alleging that a violation had been committed, if such violation occurred after July 13, 1976. The Department believes such requirements are necessary in order to properly monitor the work related activities of licensed DQP's and to effectively evaluate the integrity of individual DQP programs and to assess the scope of the horse industry's efforts to comply with the Act and regulations. In addition, the Department must have the names of DQP's in order to determine whether or not any such DQP is in conflict with the provision that prohibits the licensing of persons who have been convicted of or paid fines in settlement of a violation of the Act and regulations that occurred after July 13, 1976, the date the Horse Protection Act amendments of 1976 were signed into law.

The proposed regulations would require individual licensed DQP's and horse industry organizations and associations sponsoring a DQP program to maintain certain records and submit certain reports relating to DQP program activities to the Department on a regular basis. DQP's would be required to document and maintain specific information concerning each horse such

DQP has recommended to be excused or disqualified for any reason at any horse show, horse exhibition, horse sale, or horse auction. Such specific information would include the name and address of the show; the show manager; the horse owner; the horse trainer; the horse exhibitor; the name, age, sex, color, and markings of each horse; the exhibitors number and class number or the sale or auction tag number; the date and time of the DQP's inspection; and a detailed description of the DQP's findings and the nature of the alleged violation, including the DQP's opinion as to what caused the condition upon which the decision was based to disqualify or excuse said horse.

Further, the proposal would require the DQP to inform the custodian of each horse, allegedly found in violation of the Act and its regulations or excused or disqualified for any other reason, of the decision concerning said horse and the specific reasons for such action. Also, with 72 hours after the date of any horse show, horse exhibition, horse sale, or horse auction at which any DQP has documented violations of the Act and regulations or excused or recommended for excusing any horse for any other reason, the proposal would require said DQP to forward all information concerning each incident involving a violation or excused horse to the Department and to the organization or association that has licensed said DQP.

In turn, the DQP licensing organization or association would be required to provide complete information concerning each such incident to the owner and trainer of each horse found by one of its DQP's to be in violation of the Act or regulations or otherwise excused for any other reason at any horse show, horse exhibition, horse sale, or horse auction.

Further, each DQP licensing organization or association would be required to furnish each of its licensed DQP's with a current list of all persons disqualified by the Secretary from showing or exhibiting any horse or from judging or managing any horse show, horse exhibition, horse sale, or horse auction. This list would be provided to each licensing organization or association by the Department on a current basis. The Department feels that the maintenance of complete records involving alleged violations and the people connected with horses involved in the violations is vital to the credibility of any certified DQP program, and that such records must be available in order for the Department to evaluate the credibility and effectiveness of individual DQP's and their licensing organizations or associations in enforcing the Act and its regulations.

Further, such information is necessary in order for the Department to analytically determine which geographical areas, individual shows, exhibitions, sales, and auctions, and their managers, horse trainers, horse exhibitors, and horse owners are involved in violations as related to soring. The results of any such analysis could provide valuable assistance to the Department in determining the areas that need increased enforcement efforts as well as provide aid in the evaluation of individual DQP programs being maintained by horse industry organizations or associations.

Under the proposed regulations, each horse industry organization or association maintaining a certified DQP program would develop and provide administrative procedures within the organization or association for initiating, maintaining, and enforcing uniform standards of conduct for licensed DQP's. The proposal would also require the licensing organization or association to rescind the license of any DQP who violates the standards of conduct or who is convicted of any violation of the Act or regulations or who pays any fine or civil penalty in settlement of any alleged violation of the Act or regulations.

The minimum standards of conduct the Department would require are designed to protect the integrity and credibility of individual DQP's and their licensing organization or association. The minimum standards would be as follows:

(1) DQP's would not be allowed to exhibit any horse at any horse show or horse exhibition or purchase any horse at any horse sale or horse auction at which said DQP has been appointed by management to inspect horses;

(2) DQP's must follow the uniform inspection procedures of their licensing organization or association when inspecting horses for compliance with the Act and regulations; and,

(3) DQP's must disqualify from competition or sale any horse which in their opinion is in violation of the Act and regulations. In order to be able to determine the number of horse shows, horse exhibitions, horse sales, or horse auctions that participate in the horse industry's self-regulatory programs and, thereby, have a measure of compliance with the Act, the proposed regulations would also require sponsoring organizations and associations to provide the Department with a current list, on a monthly basis, of horse shows, horse exhibitions, horse sales, and horse auctions that will be inspected by DQP's licensed by such organization or assosication.

Information on such list would include the name, location, and date of the horse show, horse exhibition, horse sale, or horse auction and the name of the manage, if available. Since the Department is aware that there are approximatly 4,000 horse shows, horse exhibitions, horse sales, and horse auctions subject to the Act, information concerning the number of shows, exhibitions, sales, or auctions that appoint a licensed DQP to inspect horses for compliance with the Act and regulations will provide a gauge for the Department to use in making decisions relating to Department enforcement priorities.

The proposed regulations would require horse show, horse exhibition, horse sale or horse auction management to identify all horses that are sore or otherwise in violation of the Act and regulations, and prohibit any such horses from being shown, exhibited, sold, or auctioned at such horse show, horse exhibition, horse sale, or horse auction, unless such management had appointed a licensed DQP to inspect horses. Further, the proposed regulations would require horse show, horse exhibition, horse sale, or horse auction management to inspect or instruct their appointed DQP to inspect, for compliance with the Act and regulations, all gaited horses prior to being shown, exhibited, sold, or auctioned and all first place horses after they have been shown.

Inspection prior to a show, exhibition, sale, or auction will make it extremely difficult for anyone to show, exhibit, sell, or auction sore horses, or horses otherwise in violation of the Act and regulations, and will greatly aid the Department in gaining compliance with the Act. The proposed regulations would require any horse show, horse exhibition, horse sale, or horse auction management, that has appointed and retained a DQP to inspect horses, to abide by the decisions of said DQP and would not allow management to coerce or otherwise influence a DQP in making any decision, including decisions relating to the DQP's disqualification or excusing of any horse from any horse show, horse exhibition, horse sale, or horse auction.

If management does not desire to delegate full authority to an appointed DQP to excuse or disqualify horses, management then bears full responsibility under the Act and regulations in the event any horse is found to be sore or otherwise in violation of the Act and regulations.

Under the proposed regulations, should management become dissatisfied with the performance or services of a DQP during said DQP's regular tour of duty, management shall not dismiss or otherwise exert pressure on said DQP. However, management would have the prerogative of notifying in writing the Department and the organization or association licensing said DQP (if such DQP is not a Doctor of Veterinary Medicine) concerning the reasons for said management's dis-

satisfaction with the DQP. The Department feels it is necessary to protect any DQP from coercion, intimidation, threat, or any other pressure, in order to protect the integrity and credibility of any DQP program. A dedicated self-regulatory effort by the horse industry has in the past and will continue to aid the Department's efforts to enforce the Act. With this in mind, the proposed regulations place primary responsibility for the development, operation, and control of DQP programs upon the horse industry, while making available to the industry the expertise and assistance of the Department.

The proposed regulations related to the recordkeeping requirements imposed on the management of any horse show, horse exhibition, horse sale, or horse auction are substantially the same as those in the present regulations. The proposed regulations require certain details relating to the identity of various show officials and require specific information concerning the identity of horses involved in any horse show, horse exhibition, horse sale, or horse auction. Further, the proposed regulations would permit the Deputy Administrator of Veterinary Services to require in certain cases that show management maintain show records for a period in excess of 90 days. The time period required by the present regulations is 90 days. The proposed time extension is necessary on occasion when the Department is preparing alleged violation cases and is in need of additional information within management files pertaining to any such cases. The Department feels the proposed recordkeeping requirements are minimal for effective enforcement of the Act. The proposed regulations related to the Department's authority to inspect any and all show records and the legal obligation of the show management or sponsoring organization to make such records available are substantially the same as the present regulations.

The proposed new section 11.24 would require the sponsoring organization of any horse show, horse exhibition, horse sale, or horse auction to submit certain records concerning any horses that are found to be sore by the show management, show veterinarian, or other designated qualified person. The Department must have such information in order to effectively evaluate the effectiveness of the organized horse indutry self-regulatory programs and to effectively monitor the incidence of soring violations.

The proposed § 11.40 relating to the transportation of horses is substantially the same as the present regulations. Reference to horse sales and horse auctions has been added in order to bring § 11.40 into compliance with the 1976 amendments to the Horse Protection Act.

The proposed § 11.41 of the regulations deals with reporting requirements affecting horse industry organizations or associations that sanction or sponsor any horse show, horse exhibition, horse sale or horse auction. The proposal would require all such organizations or associations to furnish the Department with copies of all organization or association rulebooks and disciplinary procedures applicable to any horse show, horse exhibition, horse sale or horse auction, or any exhibitor of horses at such shows, exhibitions, sales or auctions. Copies of rulebooks would be furnished on a seasonal (annual) basis and copies of all disciplinary procedures and actions taken against exhibitors, shows, exhibitions, sales or auctions by such organization or association would be furnished on a quarterly basis. The Department feels these reports are necessary for Department officials to evaluate and analyze horse industry progress in effectuating self-regulatory compliance with the Act and regulations.

Accordingly, it is proposed that the regulations promulgated under the Horse Protection Act (9 CFR 11 et seq.) be amended in the following respects:

1. The Table of Contents cited Part 11—Horse Protection Regulations would be amended to read as follows:

PART 11—HORSE PROTECTION REGULATIONS

Sec.
11.1 Definitions.
11.2. Prohibitions concerning exhibitors.
11.3 Scar rule.
11.4 Inspection and detention of horses.
11.5 Access to premises and records.
11.6 Inspection space and facility requirements.
11.7 Certification and licensing of designated qualified persons.
11.20 Responsibilities and liabilities of management.
11.21 Records required, and disposition thereof.
11.22 Inspection of records.
11.24 Reporting by management.
11.40 Prohibitions, and requirements concerning persons involved in transportation of certain horses affecting commerce.
11.41 Reporting required of horse industry organizations or associations.

AUTHORITY: Pub. L. 91-540, 84 Stat. 1404; 15 U.S.C. 1821 et seq.

2. It is proposed that 9 CFR Part 11 be amended to read as follows:

§ 11.1 Definitions.

For the purpose of this part, unless the context otherwise requires, the following terms shall have the meanings assigned to them in this section. The singular form shall also impart the plural form and the masculine form shall also impart the feminine. Words of art undefined in the following paragraphs shall have the meaning attributed to them by trade usage.

(a) "Act" means the Horse Protection Act of 1970 (Pub. L. 91-540) as amended by the Horse Protection Act Amendments of 1976 (Pub. L. 94-360) 15 U.S.C. 1821 et seq., and any legislation amendatory thereof.

(b) "Department" means the U.S. Department of Agriculture.

(c) "Secretary" means the Secretary of Agriculture or anyone who has heretofore or may hereafter be delegated authority to act in his stead.

(d) "Administrator" means the Administrator of the Animal and Plant Health Inspection Service or any other official of the Department to whom authority has heretofore been delegated or to whom authority may hereafter be delegated to act in his stead.

(e) "Deputy Administrator" means the Deputy Administrator of the Animal and Plant Health Inspection Service for Veterinary Services, or any other official of Veterinary Services to whom authority has heretofore been delegated or to whom authority may hereafter be delegated to act in his stead.

(f) "Veterinary Services" means the office of the Animal and Plant Health Inspection Service to which responsibility is assigned for the administration of the Act.

(g) "Area Veterinarian in Charge" means the Veterinary Services veterinarian who is assigned by the Deputy Administrator to supervise and perform official duties of Veterinary Services under the Act in a Specified State of States that has been officially designated by Veterinary Services as an "Area".[1]

(h) "Veterinary Services Show Veterinarian" means the Veterinary Services Doctor of Veterinary Medicine, responsible for the immediate supervision and conduct of the Department's activities under the Act at any horse show, horse exhibition, horse sale or horse auction.

(i) "Veterinary Services representative" means any employee of Veterinary Services, or any officer or employee of any State agency who is authorized by the Deputy Administrator to perform inspections or any other functions authorized by the Act, including the inspection of the records of any horse show, horse exhibition, horse sale or horse auction.

(j) "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Trust Territory of the Pacific Islands.

[1]Information as to the name and address of the Area Veterinarian in Charge for the State or States concerned can be obtained by writing to the Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Hyattsville, Md. 20782.

(k) "Person" means any individual, corporation, company, association, firm, partnership, society, organization, joint stock company, or other legal entity.

(l) "Horse" means any member of the species *Equus caballus.*

(m) "Horse Show" means a public display of any horses, in competition, except events where speed is the prime factor, rodeo events, parades, or trail rides.

(n) "Horse Exhibition" means a public display of any horses, singly or in groups, but not in competition, except events where speed is the prime factor, rodeo events, parades, or trail rides.

(o) "Horse Sale or Horse Auction" means any event, public or private, at which horses are sold or auctioned, regardless of whether or not said horses are exhibited prior to or during the sale or auction.

(p) "Action Device" means any boot, collar, chain, roller, or other device which encircles or is placed upon the lower extremity of the leg of a horse.

(q) "Inspection" means the examination of any horse or horses and any records pertaining to any horse by use of whatever means are deemed appropriate and necessary to determine whether any horse and any records pertaining to any horse are in compliance with the Act and regulations. An inspection of a horse may include, but is not limited to, visual examination of the horse and its records, actual physical examination including touching, rubbing, palpating and observation of vital signs, and the use of any diagnostic device or instrument, and may require the removal of any shoe, pad, action device, or any other equipment, substance or paraphernalia from the horse when deemed necessary by the person conducting such inspection for purposes of ascertaining compliance with the Act and regulations.

(r) "Sponsoring Organization" means any person under whose auspices a horse show, horse exhibition, horse sale or horse auction is conducted.

(s) "Show Manager" means the person who has been delegated primary authority by a sponsoring organization for managing a horse show, horse exhibition, horse sale or horse auction.

(t) "Management" means any person or persons who organize, exercise control over, or administer or are responsible for organizing, directing, or administering any horse show, horse exhibition, horse sale or horse auction and specifically includes, but is not limited to, the sponsoring organization and show manager.

(u) "Exhibitor" means (1) any person who enters any horse, or who allows his horse to be entered, or who directs or allows any horse in his custody or under his direction, control or supervision to be entered in any horse show or horse exhibition; (2) any person who shows or exhibits any horse, or who allows his horse to be shown or exhibited, or who directs or allows any horse in his custody or under his direction, control, or supervision to be shown or exhibited in any horse show or horse exhibition; (3) any person who enters or presents any horse for sale or auction, or who allows his horse to be entered or presented for sale or auction, or who allows any horse in his custody or under his direction, control, or supervision to be entered or presented for sale or auction in any horse sale or horse auction; or (4) any person who sells or auctions any horse, or who allows his horse to be sold or auctioned, or who directs or allows any horse in his custody or under his direction, control, or supervision to be sold or auctioned.

(v) "Designated Qualified Person" means a person meeting the requirements specified in § 11.7(a) of this part, that has been appointed and delegated authority by the management of any horse show, horse exhibition, horse sale or horse auction under section 4 of the Act to inspect horses, and who is qualified to detect and diagnose horses and otherwise to inspect horses and any records pertaining to any horse for compliance with the Act.

(w) "Horse Industry Organization or Association" means an organized group of people engaged in any way with the showing, exhibiting, sale, auction, registry, or promotion of horses.

(x) "Lubricant" means mineral oil, glycerine or petrolatum, or mixtures exclusively thereof that is applied to the limbs of a horse solely for protective and lubricanting purposes while the horse is being shown or exhibited at a horse show, horse exhibition, horse sale or horse auction.

(y) "Sore" when used to describe a horse means:

(1) An irritating or blistering agent has been applied, internally or externally, by a person to any limb of a horse,

(2) Any burn, cut, or laceration has been inflicted by a person on any limb of a horse,

(3) Any tack, nail, screw, or chemical agent has been injected by a person into or used by a person on any limb of a horse, or

(4) Any other substance or device has been used by a person on any limb of a horse or a person has engaged in a practice involving a horse, and, as a result of such application, infliction, injection, use, or practice, such horse suffers, or can reasonably be expected to suffer, physical pain or distress, inflammation, or lameness when walking, trotting, or otherwise moving, except that such term does not include such an application, infliction, injection, use, or practice in connection with the therapeutic treatment of a horse by or under the supervision of a person licensed to practice veterinary medicine in the State in which such treatment was given.

§ 11.2 Prohibitions concerning exhibitors.

(a) *General prohibitions.* No chain, boot, roller, collar, action device, nor any other device, method, practice, or substance shall be used with respect to any horse at any horse show, horse exhibition, horse sale or horse auction if such use causes or can reasonably be expected to cause such horse to be sore.

(b) *Specific prohibitions.* The use of any of the following devices, equipment, or practices on any horse at any horse show, horse exhibition, horse sale or horse auction is prohibited:

(1) All beads, bangles, rollers, and similar devices, except those made of lignum vitae (hardwood), aluminum, or stainless steel, with rollers of uniform size, weight and configuration, and each such device shall weigh no more than 14 ounces, including the weight of the fastener.

(2) Chains weighing in excess of 8 ounces each including the weight of the fastener on 2-year-old horses; chains weighing in excess of 10 ounces each including the weight of the fastener on 3-year-old horses; and, chains weighing in excess of 12 ounces each including the weight of the fastener on horses 4 years old or older.

(3) Chains with links that are not of uniform size, weight and configuration; and, chains that have twisted links or double links.

(4) Chains that have drop links.

(5) More than one action device on any one limb of a horse.

(6) Chains or lignum vitae, stainless steel, or aluminum rollers which are not smooth and free of protrusions, projections, rust, corrosion, or rough or sharp edges.

(7) Boots, collars, or any other device, with protrusions or swellings, or rigid, rough, or sharp edges, seams or any other abrasive or abusive surface that may contact a horse's leg.

(8) Using pads or any other devices on yearling horses that elevate or change the angle of such horse's hoof in excess of 1 inch at the heel.

(9) Any weight on yearling horses, except a keg or other similar, conventional type horse shoe, and any horse shoe on yearling horses that weighs in excess of 16 ounces.

(10) "Heel-toe" Ratio Measurements—Toe lengths that do not exceed the height of the heel by ½ inch or more. The toe shall be measured from the coronet band, at the center of the front pastern along the hoof wall, to the ground. The heel shall be measured from the coronet band, at the most lateral portion of

the real pastern, at a 90 degree angle to the ground, not including normal caulks at the rear of a horse shoe that do not exceed ¾ inch in length. That portion of caulk at the rear of a horseshoe in excess of ¾ of an inch shall be added to the height of the heel in determining the heel-toe ratio.

(11) Artificial extension of the toe length, whether accomplished with horse shoes, pads, acrylics or any other material or combinations or the aforementioned material, unless such extension assumes the normal angle of the hoof wall and pastern and is therapeutically necessary to repair a broken hoof.

(12) Rocker-bars on the bottom surface of horse shoes that extend more than 1½ inches posterior from the point of the toe.

(13) Metal hoof bands, such as used to anchor or strengthen pads and shoes, placed less than ½ inch below the coronet band.

(14) Metal hoof bands that can be easily and quickly loosened or tightened by hand, such as, but not limited to, a wing-nut or similar fastener.

(15) Any action device, or any other device that strikes the coronet band of the foot of a horse.

(16) Shoeing a horse, or trimming a horse's hoof in a manner that will cause such horse to suffer, or can reasonably be expected to cause such horse to suffer pain or distress, inflammation, or lameness when walking, trotting, or otherwise moving.

(17) Lead or other weights attached to the outside of the hoof wall, pad or on the outside surface of the horseshoe.

(c) *Substances.* All substances are prohibited on the extremities above the hoof of any horse while being shown, exhibited, or offered for sale at any horse show, horse exhibition, horse sale, or horse auction, except glycerine, petrolatum, and mineral oil, or mixtures thereof: *Provided,* That:

(1) The horse show, horse exhibition, horse sale, or horse auction management agrees to furnish and maintain control over all lubricants used at the horse show, horse exhibition, horse sale, or horse auction.

(2) Any such lubricant is applied after the horse has been inspected by the horse show, horse exhibition, horse sale or horse auction management, the show veterinarian, or other designated qualified person (DQP), and all lubricants are applied under the supervision of the horse show, horse exhibition, horse sale, or horse auction management.

(3) Horse show, horse exhibition, horse sale or horse auction management makes such lubricants available for Department personnel to inspect and sample as they deem necessary for laboratory analysis or otherwise.

(d) *Competition restrictions—2 Year-Old Horses.* Horse show or horse exhibitions workouts for 2-year-old horses and working exhibitions of 2-year-old horses at horse sales or horse auctions that exceed 10 minutes without a minimum of 5 minutes rest period between workouts and, more than two workout periods per performances are prohibited.

(e) *Information requirements—horse related.* Failing to provide information or providing any false or misleading information by any person that owns, trains, shows, exhibits, or sells or has custody of, or direction or control over any horse shown, exhibited, sold, or auctioned or entered for the purpose of being shown, exhibited, sold, or auctioned at any horse show, horse exhibition, horse sale, or horse auction is prohibited. Such information shall include, but is not limited to: information concerning the registered name, markings, sex, age, and legal ownership of the horse; the name and address of the horse's training and/or stabling facilities; the name and address of the owner, trainer, rider, any other exhibitor, or other legal entity bearing responsibility for the horse; the class in which the horse is entered or shown; the exhibitor identification number; and, any other information reasonably related to the identification, ownership, control, direction, or supervision of any such horse.

§ 11.3 Scar rule.

All horses up to and including 5-year-old horses in the 1977 horse show season and thereafter, when shown, exhibited, sold, or auctioned at any horse show, horse exhibition, horse sale, or horse auction, or when entered for show or exhibition or offered for sale or auction at any horse show, horse exhibition, horse sale, or horse auction shall be disqualified from showing, exhibition, sale, or auction by the management of any horse show, horse exhibition, horse sale, or horse auction if they do not meet the following scar rule requirements. Such horses which do not meet the following scar rule criteria shall be considered to be "sore" and be subject to the prohibitions of § 5 of the Act:

(a) The anterior and anterior-lateral surfaces of the fore pasterns (extensor surface) must be free of bilateral granulomas, other bilateral pathological evidence of inflammation, and, other bilateral evidence of abuse indicative of soring including, but not limited to, excessive loss of hair.

(b) The posterior surfaces of the pasterns (flexor surface), including the sulcus or "pocket", may show bilateral areas of uniformly thickened epithelial tissue if such areas are free of proliferating granulation tissue, irrition, moisture, edema, or other evidence of inflammation.

§ 11.4 Inspection and detention of horses.

For the purpose of effective enforcement of the Act:

(a) Each horse owner, exhibitor, trainer, or other person having custody of, or responsibility for, any horse on the grounds of or otherwise at any horse show, horse exhibition, horse sale, or horse auction, shall allow any Veterinary Services representative, after such representative has presented appropriate credentials, to reasonably inspect such horse at all reasonable times and places the Veterinary Services representative may designate. Such inspections may be required of any horse which is stabled, loaded on a trailer, being prepared for show, exhibition, sale or auction, being exercised or otherwise on the grounds of, or present at, any horse show, horse exhibition, horse sale, or horse auction whether or not such horse has or has not been shown, exhibited, sold, or auctioned, or has or has not been entered for the purpose of being shown or exhibited or offered for sale or auction at any such horse show, horse exhibition, horse sale, or horse auction.

This authority shall not be construed to permit Veterinary Services representatives to generally or routinely delay or interrupt actual individual classes or performances at horse shows, horse exhibitions, horse sales, or horse auctions for the purpose of examining horses, except in extraordinary situations, such as but not limited to, where no other adequate facilities are available for such inspections or they have reason to believe failure to do so may result in the loss, removal, or masking of any evidence of a violation of the Act or the regulations, unless management of such horse show, horse exhibition, horse sale, or horse auction requests such inspection or accedes to such a request by a Veterinary Services representative.

(b) When any Veterinary Services representative notifies the owner, exhibitor, trainer, or other person having custody of or responsibility for a horse at any horse show, horse exhibition, horse sale, or horse auction that Veterinary Services desires to inspect such horse, it shall not be moved from the horse show, horse exhibition, horse sale, or horse auction until such inspection has been completed and the horse has been released by a Veterinary Services representative.

(c) For the purpose of examination, testing, or taking of evidence, Veterinary Services representatives may detain for a period not to exceed 24 hours any horse, at any horse show, horse exhibition, horse sale, or horse auction, which is sore or which a Veterinary Services veterinarian has probably cause to believe is sore.

(d) Detained horses shall be kept under the supervision of Veterinary Services representatives or secured under an official USDA seal or seals in a horse stall or other facility to which

access can be limited. The official USDA seal or seals may not be broken or removed, by any person other than a Veterinary Services representative, unless:

(1) The life or well-being of the detained horse is immediately endangered by fire, flood, windstorm, or other dire circumstances that are beyond human control.

(2) The detained horse is in need of such immediate veterinary attention that its life may be in peril before a Veterinary Services representative can be located.

(3) The horse has been detained for a maximum 24-hour detention period.

(e) The owner, exhibitor, trainer, or other person having custody of or responsibility for any horse detained by Veterinary Services for further examination, testing, or the taking of evidence shall be allowed to feed, water, and provide other normal custodial and maintenance care for such detained horse, Provided, That:

(1) Such feeding, watering, and other normal custodial and maintenance care of the detained horse is rendered under the direct supervision of a Veterinary Services representative.

(2) Any non-emergency veterinary care of the detained horse requiring the use, application, or injection of any drugs or other medication for therapeutic or other purposes is rendered by a Doctor of Veterinary Medicine in the presence of a Veterinary Services representative and, the identity of the drug or other medication used, applied, or injected and its purpose is furnished in writing to a Veterinary Services representative prior to such use, application, or injection by the Doctor of Veterinary Medicine attending the horse, and the use, application, or injection of such drug or other medication is approved by a Veterinary Services veterinarian.

(f) The owner, trainer, exhibitor, or other person having immediate custody of or responsibility for any horse allegedly found to be in violation of the Act or the regulations shall be informed of such alleged violation or violations by a Veterinary Services representative before the horse is released by a Veterinary Services representative.

(g) The owner, trainer, exhibitor, or other person having immediate custody of or responsibility for any horse or horses that a Veterinary Services represenative determines shall be detained for examination, testing, or taking of evidence pursuant to paragraph (e) of this section shall be informed after such determination is made and said horse shall immediately be put under the supervisory custody of Veterinary Services or secured under official USDA seal as provided in paragraph (d) of this section until the completion of such examination, testing, or gathering of evidence, or the 24-hour detention period expires.

(h) The owner, trainer, exhibitor, or other person having custody of or responsibility for any horse allegedly found to be in violation of the Act and its regulations, and who has been notified of such alleged violation by a Veterinary Services representative as required in paragraph (f), may request reexamination and testing of said horse within a 24-hour period, Provided, That:

(1) Such request is made to the Veterinary Services Show Veterinarian immediately after the horse has been examined by Veterinary Services representatives and before such horse has been removed from the Veterinary Services inspection facilities; and

(2) The Veterinary Services Show Veterinarian determines that sufficient cause for reexamination and testing exists, and that Veterinary Services personnel are available to conduct such reexamination and testing; and,

(3) The horse is maintained under Veterinary Services supervisory custody as prescribed in paragraph (d) of this section until such reexamination and testing has been completed.

(i) The owner, exhibitor, trainer, or other person having custody of, or responsibility for any horse being inspected shall render such assistance as the Veterinary Services representative may reasonably request for purposes of such inspection.

§ 11.5 Access to premises and records.

Access to premises for inspection of horses and records required is as follows:

(a) a. *Management.* (1) The management, show manager, and the sponsoring organization of any horse show, horse exhibition, horse sale, or horse auction shall, without fee, charge, assessment, or other compensation, provide properly identified Veterinary Services representatives with unlimited access to the grandstands, sale ring, barns, stables, grounds, offices, and all other areas of any horse show, horse exhibition, horse sale, or horse auction, including any adjacent areas under their direction, control, or supervision for the purpose of inspecting any horses at, or records required to be kept by such horse show, horse exhibition, horse sale or horse auction.

(2) The management, show manager, and the sponsoring organization of any horse show, horse exhibition, horse sale or horse auction shall, without fee, charge, assessment, or other compensation, provide properly identified Veterinary Services representatives with an adequate, safe, and accessible area for the visual inspection and observation of horses while such horses are competitively or otherwise performing at any horse show or horse exhibition, or while such horses are being sold or auctioned or offered for sale or auction at any horse sale or horse auction.

(b) b. *Exhibitors.* (1) Each horse owner, exhibitor, or other persons having custody of or responsibility for any horse at any horse show, horse exhibition, horse sale, or horse auction shall, without fee, charge, assessment, or other compensation, admit any Veterinary Services representative or Designated Qualified Person appointed by management, to all areas of barns, compounds, horse vans, horse trailers, stables, stalls, paddocks, or other show, exhibition, sale, or auction grounds or related areas at any horse show, horse exhibition, horse sale, or horse auction, for the purpose of inspecting any such horse at any and all reasonable times.

(2) Each owner, trainer, exhibitor, or other person having custody of or responsibility for, any horse at any horse show, horse exhibition, horse sale, or horse auction shall promptly present his horse for inspection upon notification, orally or in writing, by any Veterinary Services representative or Desginated Qualified Person appointed by management, that said horse has been selected for examination for the purpose of determining whether such horse is in compliance with the Act.

§ 11.6 Inspection space and facility requirements.

The management of every horse show, horse exhibition, horse sale, or horse auction shall provide appropriate space and facilities for Veterinary Services representatives to carry out their duties under the Act at every horse show, horse exhibition, horse sale, or horse auction, whether or not management has been notified or otherwise knows that such show may or may not be inspected by Veterinary Services, as follows:

(a) Sufficient space in a convenient location to the horse show, horse exhibition, horse sale, or horse auction arena, acceptable to the Veterinary Services Show Veterinarian, in which horses may be physically, thermographically, or otherwise inspected.

(b) Protection from the elements of nature, such as rain, snow, sleet, hail, windstorm, etc.

(c) A means to control crowds or onlookers in order for Veterinary Services personnel to carry out their duties without interference and with a reasonable measure of safety.

(d) An accessible, reliable, and convenient 110-volt electrical power source.

(e) An appropriate area adjacent to the inspection area for designated horses to wait for inspection.

§ 11.7 Certification and licensing of designated qualified persons.

(a) Individuals who may be appointed by mangement of any horse show, horse exhibition, horse sale, or horse auction as a Designated Qualified Person (DQP) to inspect horses to detect and diagnose soring and otherwise inspect horses, or any records pertaining to any horse, for compliance with the Act are as follows:

(1) Doctors of Veterinary Medicine who are accredited in any State by the United States Department of Agriculture under Part 161 of Chapter I of Title 9 of the Code of Federal Regulations, and who meet one or more of the following criteria:

(i) They are members of the American Association of Equine Practitioners.

(ii) They are large Animal Practitioners with substantial equine experience;

(iii) They are knowledgeable about equine lameness problems as related to soring and soring practices.

For example: A Doctor of Veterinary Medicine with a small animal practice who owns, trains, judges, or shows horses; or, a Doctor of Veterinary Medicine who teaches equine related subjects in an accredited college or school of veterinary medicine.

(2) Farriers, horse trainers, and other knowledgeable horsemen who have been formally trained and licensed as Designated Qualified Persons by a horse industry organization or association whose DQP program has been certified by the Department under subsections (b) and (c) of this section.

(b) *Certification requirements for a designated qualified person (DQP) program.*

The Department will not license DQP's on an individual basis. Licensing of DQP's will be accomplished only by the certification of DQP programs initiated and maintained by horse industry organizations or associations.

(b) Any organized horse industry organization or association desiring Department certification to train and license Designated Qualified Persons under the Act shall submit to the Department[2] in writing a formal request for certification of the DQP program and, a detailed outline of the DQP program. In order to be certified, such outline of a DQP program must contain at least the following requirements:

(1) The criteria to be used to select DQP candidates and the minimum qualifications and knowledge of horses each candidate must have in order to be admitted to the program.

(2) A copy of the formal training program, classroom and practical, required to be completed by each DQP candidate before being licensed by such horse industry organization or association, including the approximate number of hours, classroom and practical, and the subject matter included in the training program. Such training program must meet the following minimum standards in order to be certified by the Department under the Act:

(i) Two hours of classroom instruction on the anatomy and physiology of the limbs of a horse. The instructor teaching the course must be specified and a resume of said instruction's background, experience, and qualifications to teach such course.

(ii) Two hours of classroom instruction on the Horse Protection Act and regulations and their interpetation. Instructors for this course must be furnished or recommended by the Department. Requests for instructors to be furnished or recommended must be made to the Department[2] in writing.

(iii) Four hours of classroom instruction on the history of soring, the physical examination procedures necessary to detect soring, the detection and diagnosis of soring, and related subjects. The instructor teaching the course must be specified and a summary of said instructor's background, experience, and qualifications to teach such course.

(iv) Four hours of practical instruction in clinics and seminars with actual application of the knowledge gained in the classroom subjects covered in (i), (ii), and (iii). The names of the instructors and a resume of their background, academic or practical experience, and qualifications to teach such courses. Notification of the actual date, time, duration, subject matter, and geographic location of such clinic or seminar must be sent to the Deputy Administrator[2] at least 10 days prior to each such clinic or seminar.

(v) One hour of classroom instruction on the DQP standards of conduct required by the Department.

(3) A sample of a written examination which must be passed by DQP candidates for successful completion of the program along with sample answers and scoring thereof, and proposed passing and failing standards.

(4) The criteria to be used to determine the qualifications and performance abilities of DQP candidates for the successful completion of the training program, in addition to the written examination required in 11.7(b)(3) of the regulations.

(5) The criteria for continuing education and satisfactory performance appraisals for continued licensing of DQP's by such organization or association.

(6) The methods to be used to insure uniform interpretation and enforcement of the Horse Protection Act and regulations by DQP's, and uniform procedures for inspecting horses for compliance with the Act and regulations; and

(7) A formal request for Department[2] certification of the DQP program.

The horse industry organizations or associations that have formally requested Department certification of their DQP training, enforcement, and maintenance program will receive a formal notice of certification from the Department, or the reasons, in writing, why certification of such program cannot be approved. Such certification of a DQP program shall be published in the FEDERAL REGISTER along with a list of the names of individuals licensed as DQP's by each organization or association that has a certified DQP program. A current list of certified DQP programs and licensed DQP's will be published in the FEDERAL REGISTER at least once each year, and as may be further required for the purpose of deleting the names of DQP's that are no longer certified and licensed, and to add the names of DQP's that have been licensed subsequent to the publication of the previous list.

(c) *Licensing of designated qualified persons.* Any horse industry organization or association receiving Department certification for the training and licensing of DQP's under the Act shall:

(1) Issue each DQP licensed by such horse industry organization or association a numbered identification card bearing the name and personal signature of the DQP, a picture of the DQP, and the name and address, including the street address or post office box and zip code, of the licensing organization or association;

(2) Submit a list to the Department[2] of names and addresses, including street address or post office box and zip code, of all DQP's that have completed the certified DQP program and have been licensed under the Act and regulations by such horse industry organization or association;

(3) Notify the Department of any additions or deletions of licensed DQP's from the licensed DQP list submitted to the Department or change in the address of any DQP licensed by such horse industry organization or association within 10 days of such change; and

(4) No DQP candidate shall be licensed by any horse industry organization or association if such candidate has been convicted of any violation of the Act or regulations, or paid any fine or civil penalty in settlement of any proceeding alleging that any violation of the Act or regulations was committed, occuring after July 13, 1976.

[2]Deputy Administrator, 6505 Belcrest Road, Room 770, Hyattsville, Md. 20782.

[2]Same as previous footnote 2.

within the previous two years for the first such violation or the previous five years for such a second or subsequent violation.

(d) *Requirements for DQP's and the licensing organization or association.*

(1) Any licensed DQP appointed by the management of any horse show, horse exhibition, horse sale, or horse auction to inspect horses for the purpose of detecting and diagnosing horses which are sore and otherwise inspect horses for the purpose of enforcing the Act and regulations, shall keep and maintain the following information and records concerning any horse which said DQP recommends be disqualified or excused by management for any reason at such horse show, horse exhibition, horse sale, or horse auction, in a uniform format required by the horse industry organization or association that has licensed said DQP.

(i) The name and address, including street address or post office box and zip code, of the show and the show manager.

(ii) The name and address, including street address or post office box and zip code, of the horse owner.

(iii) The name and address, including street address or post office box and zip code, of the horse trainer.

(iv) The name and address, including street address or post office box and zip code, of the horse exhibitor.

(v) The exhibitors number and class number, or the sale or auction tag number of said horse.

(vi) The date and time of the inspection.

(vii) A detailed description of all of the DQP's findings and the nature of the alleged violation, or other reason for disqualifying or excusing or recommending the horse be excused or disqualified, including said DQP's opinion as to what caused the condition upon which the decision to disqualify or excuse or recommend disqualifying or excusing said horse was based.

(viii) The name, age, sex, color, and markings of the horse: and

(ix) The name or names of the show manager or other management representative notified by the DQP that such horse was or should be excused; and, whether or not such manager or representative excused or disqualified any such horse.

Copies of the above records shall be submitted by the involved DQP to the Department[2] and to the horse industry organization or association that has licensed said DQP within 72 hours after the horse show, horse exhibition, horse sale, or horse auction is over.

(2) The DQP shall inform the custodian of each horse allegedly found in violation of the Act or its regulations, or disqualified or excused, or recommended to management to be disqualified or excused for any other reason, of such action and the specific reasons for such action.

(3) Each Department certified horse industry organization or association shall submit a report containing the following information, from records required in § 11.7(d)(A) above and other available sources, to the Department[2] on a monthly basis:

(i) The identity of all horse shows, horse exhibitions, horse sales, or horse auctions that have retained the services of DQP's licensed by said organization or association during the month covered by the report. Information concerning the identity of such horse shows, horse exhibitions, horse sales, or horse auctions shall include:

(A) The name and location of the show, exhibitions, sale, or auction.

(B) The name and address of the manager.

(C) The date or dates of the show, exhibition, sale, or auction.

(ii) The identity of all horses at each horse show, horse exhibition, horse sale, or horse auction that the licensed DQP recommended be disqualified or excused for any reason. The information concerning the identity of such horses shall include:

(A) The registered name of each horse.

(B) The name and address of the owner, trainer, exhibitor, or other person having custody of or responsibility for the care of each such horse the DQP recommended be disqualified or excused.

(4) The certified organization or association shall provide, by certified mail if personal service is not possible, to the trainer and owner of each horse allegedly found in violation of the Act or its regulations or otherwise disqualified or excused for any reason by one of said organization or association DQP's at any horse show, horse exhibition, horse sale, or horse auction, the following information:

(i) The name and date of the show, exhibition, sale, or auction.

(ii) The name of the horse and the reason why said horse was excused, disqualified, or alleged to be in violation of the Act or its regulations.

(5) Each horse industry organization or association shall provide each of its licensed DQP's with a current list of all persons that have been disqualified by order of the Secretary from showing or exhibiting any horse, or judging or managing any horse show, horse exhibition, horse sale, or horse auction. Such list shall be provided on a current basis by the Department to each organization or association that maintains a certified DQP program.

(6) Develop and provide administrative procedures within the organization or association for initiating, maintaining, and enforcing uniform standards of conduct for its licensed DQP's. Such standards and enforcement criteria shall include the causes for and methods to be utilized in rescinding or removing the license of any DQP who fails to properly and adequately carry out the duties of a licensed DQP. Minumum standards of conduct for DQP's are as follows: (i) DQP's may not exhibit any horse at any horse show or horse exhibition, or sell, auction, or purchase any horse sold at a horse sale or horse auction at which the DQP has been appointed by management to inspect horses; (ii) DQP's must follow the uniform inspection procedures of the certified organization or association when inspecting horses; (iii) DQP's must disqualify or recommend to management the disqualification from competition or sale any horse found to be in violation of the Horse Protection Act and the regulations; and, (iv) the license of any DQP, convicted of any violation of the Act or regulations or who pays any fine, or civil penalty in settlement of any alleged violation of the Act or regulations, shall be rescinded if such alleged violation occurred after July 13, 1976.

(7) No DQP who has been disqualified by the Secretary, after notice and opportunity for a hearing, shall be appointed by any organization.

(e) *Removal of certification for horse industry organization or association DQP program.* Any horse industry organization or association with a Department certified DQP program which fails to comply with the requirements contained in this Section (§ 11.7) may have such certification of their DQP program rescinded, unless upon written notification from the Department of such failure to comply with the requirements in this Section, such organization or association takes immediate action to rectify such failure and takes appropriate steps to prevent a recurrence of such violation within the time period specified in such Department notification, or otherwise adequately explains such failure. Any horse industry organization or association whose DQP program certification has been rescinded, may appeal such rescinding action to the Deputy Administrator in writing, within 30 days after such rescinding action becomes effective.

§ 11.20 Responsibilities and liabilities of management.

(a) It is unlawful for any person to conduct any horse show, horse exhibition, horse sale, or horse auction in which there is shown, exhibited, sold, or auctioned any horse which is sore.

The sponsoring organization or the horse show, horse exhibition, horse sale, or horse auction manager shall identify all horses that are sore or otherwise in violation of the Act and its regulations, and cause such sore horses to be prohibited from partici-

pating or competing, and cause such horses to be removed from participation or competition in any horse show, horse exhibition, horse sale, or horse auction. Horses entered for sale or auction at a horse sale or horse auction must be identified as sore or otherwise in violation of the Act and its regulations prior to the sale or auction and prohibited from entering the sale or auction ring. Sore horses or horses otherwise in violation of the Act and its regulations that have been entered in a horse show or horse exhibition for the purpose of show or exhibition should be identified and excused prior to the show or exhibition. Any horses found to be sore or otherwise in violation of the Act and its regulations by a judge or other show management representative during actual participation in the show or exhibition, must be removed from further participation prior to the tyeing of the class or the completion of the exhibition. All horses tyed first in each class or event at any horse show or horse exhibition shall be inspected after being shown or exhibited to determine if such horse is sore or otherwise in violation of the Act and regulations.

(b) Alternatively: (1) The sponsoring organization, or the horse show, horse exhibition, horse sale, or horse auction manager, shall designate and appoint a Designated Qualified Person (DQP) to inspect horses and shall accord said DQP the small access to all records and areas of the grounds of such show, exhibition, sale, or auction and right to inspect horses and records as is accorded to any Veterinary Services representative. Further, management shall not take any action which would interfere with or influence said DQP in carrying out his duties or making decisions concerning whether or not any horse may be permitted to be shown, exhibited, sold or auctioned. In the event management is dissatisfied with the performance of a particular DQP, including disagreement with decisions concerning excused or disqualified horses, management shall not dismiss or otherwise interfere with said DQP, during the DQP's appointed tour of duty. However, management should immediately notify, in writing, the Department[2] and the organization or association that licensed the DQP, as to why the performance of said DQP was inadequate or otherwise unsatisfactory. If management does not delegate absolute authority to the appointed DQP to excuse or disqualify any horse, management must take immediate action to disqualify or excuse any horse the DQP has recommended to be disqualified or excused. Should management fail to disqualify or excuse any horse the DQP has recommended to be disqualified or excused due to an apparent violation, said management shall assume full responsibility for and liabilities arising from the showing, exhibition, sale, or auction of said horse.

(2) the DQP shall physically inspect all horses entered for sale or auction and all horses entered in any animated gait class (whether under saddle, horse to cart, or otherwise), and all horses entered for exhibition before they are admitted to be shown, exhibited, sold, or auctioned, any every such horse tyed first in its class or event at any horse show, horse exhibition, horse sale, or horse auction to determine whether any horse entered for show, exhibition, sale, or auction is sore, abnormally sensitive, illegally shod, in violation of the Scar Rule, or otherwise in violation of the Act and its regulations. Such physical examination may be conducted in any manner deemed necessary by the DQP in order to determine whether any such horse is sore or otherwise in violation of the Act and regulations. The DQP shall observe the horses in the warm-up ring and during actual performances whenever possible, and shall inspect any horse at any such other time as he deems necessary to determine whether any horse shown, exhibited, sold, or auctioned is sore or otherwise in violation of the Act and regulations.

(3) The DQP shall report, to the management of any horse show, horse exhibition, horse sale, or horse auction, any horses which the DQP has excused or recommended be excused for being sore, abnormally sensitive, illegally shod, in violation of the Scar Rule, or otherwise in violation of the Act and regulations. Such report shall be made whenever possible before the show class or exhibition involving said horse has began or before said horse is offered for sale or auction.

(c) The show, exhibition, sale, or auction manager shall immediately cause to be removed from showing, exhibition, sale, or auction, all horses identified by the DQP as sore, all horses otherwise known to be sore, and all horses otherwise known to be in violation of the Act or regulations.

§ 11.21 Records required, and disposition thereof.

(a) The sponsoring organization and the show manager of any horse show, horse exhibition, horse sale, or horse auction shall maintain for a period of 90 days following the closing date of said show, exhibition, sale, or auction, all pertinent records containing:

(1) The dates and place of the horse show, horse exhibition, horse sale, or horse auction.

(2) The name and address (including street address or post office box number and ZIP code) of the sponsoring organization.

(3) The name and address of the horse show, exhibition, horse sale or horse auction manager.

(4) The name and address (including street address or post office box number and ZIP code) of the DQP, if any, employed to conduct inspections under § 11.20; and, the name of the horse industry organization or association certifying the DQP if the DQP is not a Doctor of Veterinary Medicine.

(5) The name and address (including street address or post office box number, and ZIP code) of each show judge.

(6) A copy of each class or sale sheet containing the names of horses, the names and addresses (including street address, post office box and ZIP code) of horse owners, the exhibitor number and class number, or sale number assigned to each horse, the show class or sale lot number, and the name and address (including street address, post office box, and ZIP code) of the person paying the entry fee and entering the horse in a horse show, horse exhibition, horse sale, or horse auction.

(7) A copy of the official horse show, horse exhibition, horse sale, or horse auction program, if any such program has been prepared.

(8) The identification of each horse, including the name of the horse, the name and address (including street address, post office box, and ZIP code) of the owner, the trainer, the rider or other exhibitor, and the location (including street address, post office box, and ZIP code) of the home barn or other facility where the horse is stabled.

(b) The sponsoring organization or manager of any horse show, horse exhibition, horse sale or horse auction shall designate a person to maintain the records required in this section.

(c) The sponsoring organization or manager of any horse show, horse exhibition, horse sale, or horse auction shall furnish to any Veterinary Services representative, upon request, the name and address (including street address, or post office box, and ZIP code) of the person designated by the sponsoring organization or manager to maintain the records required by this section.

(d) The Deputy Administrator may, in specific cases, require that a horse show, horse exhibition, horse sale, or horse auction records be maintained by the sponsoring organization for a period in excess of 90 days.

§ 11.22 Inspection of records.

(a) The sponsoring organization, manager, or any designee thereof, of any horse show, horse exhibition, horse sale, or horse auction shall permit any Veterinary Services representative, upon request and proper identification, to examine and make copies of any and all records required in any part of the regulations, during ordinary business hours or such other

[2]Same as previous footnote 2.

times as may be mutually agreed upon. A room, table, or other facilities necessary for proper examination of such records shall be made available to the Veterinary Services representative.

(b) Horse industry organizations or associations who train, maintain, and certify DQP programs shall permit any Veterinary Services representative, upon request and proper identification, to examine and copy any and all records relating to the DQP program and required by any part of the regulations. Such requests shall be made during ordinary business hours or such other times as mutually agreed upon. A room, table, or other facilities necessary for proper examination shall be made available upon the request of a Veterinary Services representative.

§ 11.24 Reporting by management.

Within 72 hours following the conclusion of any horse show, horse exhibition, horse sale, or horse auction, the management of such show exhibition, sale, or auction shall submit to the Area Veterinarian in Charge[1] for the State in which the show, exhibition, sale, or auction was held, the information required by § 11.7(d)(A) and § 11.21(a)(6) for each horse excused or disqualified by management or their representatives, and the reasons for such action.

§ 11.40 Prohibitions and requirements concerning persons involved in transportation of certain horses affecting commerce.

(a) Each person who ships, transports, or otherwise moves, or delivers or receives for movement, any horse with reason to believe such horse may be shown, exhibited, sold or auctioned at any horse show, horse exhibition, horse sale, or horse auction, shall allow and assist in the inspection of such horse to determine compliance with the Act as provided in § 11.4 of the regulations and shall furnish to any Veterinary Services representative upon his request the following information:

(1) Name and address (including street address, post office box and ZIP code) of the horse owner and of the shipper, if different from the owner or trainer.

(2) Name and address (including street address, post office box, and ZIP code) of the horse trainer.

(3) Name and address (including street address, post office box, and ZIP code) of the carrier transporting the horse, and of the driver of the means of conveyance used.

(4) Origin of the shipment and date thereof, and,

(5) Destination of shipment.

§ 11.41 Reporting required of horse industry organizations or associations.

Each horse industry organization or association which sponsors, or which sanctions any horse show, horse exhibition, horse sale, or horse auction, shall furnish the Department[2] each season with all such organization or association rulebooks and disciplinary procedures applicable to such horse shows, horse exhibitions, horse sales or horse auctions. Exhibitors, trainers, and owners of horses at such shows, exhibitions, sales, or auctions, should be furnished such rulebooks and information relating to disciplinary procedures. Each horse industry organization, or association shall furnish the Department[2] with a quarterly report of all disciplinary actions, and the results thereof, taken by such organization or association against the management of any horse show, horse exhibition, horse sale, or horse auction, any exhibitor, or any DQP.

All written submissions made pursuant to this notice will be made available for public inspection at the Federal Building, 6505 Belcrest Road, Room 703, Hyattsville, Md., during regular hours of business (8 a.m. to 4:30 p.m. Monday through Friday, except holidays) in a manner convenient to the public business (7 CFR 1.27(b)).

Comments submitted should bear a reference to the date and page number of this issue in the FEDERAL REGISTER.

Done at Washington, D.C., this 26th day of April 1978.

NOTE.—The Animal and Plant Health Inspection Services has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821 and OMB Circular A-107. However, an economic impact statement has been drafted and a copy of said draft statement may be obtained by writing to the Deputy Administrator, USDA, APHIS, VS, Room 703, Federal Building, 6505 Belcrest Road, Hyattsville, Md. 20782.

PIERRE A. CHALOUX,
Deputy Administrator,
Veterinary Services.

[FR Doc. 78-11705 Filed 4-27-78; 8:45 am]

[1]Same as previous footnote 1.

[2]Same as previous footnote 2.